(5)

No. 95-1201

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, and DAVID SERENA,
Appellants,

v.

MONTEREY COUNTY, CALIFORNIA, STATE OF CALIFORNIA, *Appellees,*
and
STEPHEN A. SILLMAN, *Intervenor-Appellee*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOINT APPENDIX

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Appeal Docketed January 29, 1996
Probable Jurisdiction Noted April 1, 1996

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* Documents designated and included in the Joint Appendix have not been modified to correct typographical and other types of errors.

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[1] Docket Entry No. 119 is incorrectly designated as a document filed by Monterey County. The correct designation should be the Plaintiffs.

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[2] Filing of document occurred after Notice of Appeal was filed.

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 95-1201		
Date	**Doc. No.**	**Description** *(Part of Court Record - Not on Docket Sheet)**
09/06/91	1	"COMPLAINT (Summons (es) issued) (referred to Magistrate Judge Edward A. Infante) (cv) [Entry date 09/09/91]"
10/28/91	6	"ANSWER by defendant Monterey County to complaint [1-1] (cv) [Entry date 10/30/91]"
01/09/92	13	"TEMPORARY RESTRAINING ORDER by Judge William A. Ingram [7-1]; order to show cause ddl 2/10/92 (cc: all counsel) (cv) [Entry date 01/10/92]"
06/24/92	20	"ORDER by Judge Ronald M. Whyte Plaintiffs have requested for three judge panel on 5/11/92 the court issued a tentative decision, denying plaintiff's Request of a 3 judge court. Court has read and considered both parties brief and concludes that its tentative decision is wrong and that plaintiff's request is in fact meritorious. The court hereby notifies the Chief Judge of the Circuit of the circuit of plaintiff request for the convening of a three judge court. request for a three judge court. (Date Entered: 6/26/92) [Edit date 09/28/92]"
08/20/92	21	"ORDER by Judge Ronald M. Whyte; Status conference set for 10:30 10/9/92 (Date Entered: 8/21/92) (cc: all counsel) (cv) [Entry date 08/21/92]"

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 95-1201		
Date	**Doc. No.**	**Description** *(Part of Court Record - Not on Docket Sheet)**
09/28/92	22	"JOINT STATUS CONFERENCE STATEMENT by plaintiff David Serena, defendant Monterey County (cv) [Entry date 09/29/92]"
10/09/92	23	"MOTION by plaintiff Vicky M. Lopez for summary judgment with Notice set for to be announced (cv)"
10/09/92	24	"MEMORANDUM BY plaintiff Vicky M. Lopez in support for motion for summary judgment [23-1] (cv)"
10/09/92	25	"DECLARATION by Joaguin G. Avila on behalf of plaintiff Vicky M. Lopez re motion for summary judgment [23-1] (cv)"
10/09/92	26	"MOTION by defendant Monterey County to dismiss for failure to join an indispensable party, or in the second alternative, for for summary judgment with Notice set for to be set (cv)"
10/09/92	27	"MEMORANDUM by defendant Monterey County in support of motion to dismiss for failure to join an indispensable party [26-1], of motion for summary judgment [26-2] (cv)"
10/09/92	28	"DECLARATION by Mary A. Wallace on behalf of defendant Monterey County re motion to dismiss for failure to join an indispensable party [26-1] (cv)"

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 95-1201		
Date	**Doc. No.**	**Description** *(Part of Court Record - Not on Docket Sheet)**
10/09/92	29	"DECLARATION by I.L. Hollingsworth on behalf of defendant Monterey (cv)"
10/09/92	30	"DECLARATION by Bradley J. Clark on behalf of defendant Monterey County re motion to dismiss for failure to join an indispensable party [26-1], re motion for summary judgment [26-2] (cv)"
10/09/92	31	"Minutes: (C/R Shelly Coffey); Status conference held (cv) [Entry date 10/15/92]"
10/23/92	32	"OPPOSITION by plaintiff Vicky M. Lopez to motion to dismiss for failure to join an indispensable party [26-1], motion for summary judgment [26-2] (cv) [Entry date 10/26/92]"
10/23/92	33	"OPPOSITION by defendant Monterey County to motion for summary judgment [23-1] (cv) [Entry date 10/27/92]"
10/23/92	34	"ORDER by Judge Ronald M. Whyte setting hearing on motion to dismiss for failure to join an indispensable party [26-1] 1:30 12/17/92, setting hearing on motion for summary judgment [26-2] 1:30 12/17/92, setting hearing on motion for summary judgment [23-1] 1:30 12/17/92 will be heard by the three judge panel

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 95-1201		
Date	**Doc. No.**	**Description** *(Part of Court Record - Not on Docket Sheet)**
10/23/92 Cont'd	34	of Judge Ronald M. Whyte (Date Entered: 10/28/92) (cc: all counsel) (cv) [Entry date 10/28/92]"
10/28/92	35	"REPLY filed by plaintiff's re opposition [33-1] (cv)"
10/30/92	36	"REPLY by defendant Monterey County re opposition [32-1] (cv) [Entry date 11/02/92]"
01/05/93	37	"MINUTES: (C/R Shelly Coffey) that the motion to dismiss for failure to join an indispensable party [26-1] is submitted, that the motion for summary judgment [26-2] is submitted, that the motion for summary judgment [23-1] is submitted for three judge panel of Judge Ronald M. Whyte and Judge James Ware and Judge Schroeder (cv) [Entry date 1/13/93]"
02/10/93	38	"REPORTER'S TRANSCRIPT; Date of proceedings: 1/5/93 (C/R: Shelly Coffey) (cv)"
04/01/93	39	"ORDER by Judge Ronald M. Whyte denying motion for summary judgment [26-2], granting motion for summary judgment [23-1] Status conference set for 10:30 9/3/93; (Date Entered: 4/7/93) (cc: all counsel) (cv) [Entry date 04/07/93]"

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 95-1201		
Date	**Doc. No.**	**Description** *(Part of Court Record - Not on Docket Sheet)**
09/03/93	40	"MINUTES: (C/R Shelly Coffey) Case Management Conference set for 10:30 3/4/94; (cv) [Entry date 09/15/93]"
09/03/93	*	"STIPULATION REGARDING INJUNCTION AND CONTINUING JURISDICTION"
11/22/93	*	"PARTIES STIPULATION AND COURT ORDER"
12/03/93	41	"ORDER by Judge Ronald M. Whyte The State of California motion to intervene filed by 12/7/93; Opposition filed by 12/14/93; Briefs filed by 12/14/93; (Date Entered: 12/7/93) (cc: all counsel) [5:91-cv-20559] (cv) [Entry date 12/07/93]"
12/07/93	42	"MOTION before Judge Ronald M. Whyte for limited to intervene [5:91-cv-20559] (cv) [Entry date 12/08/93]"
12/07/93	43	"OBJECTIONS to stipulation and order [5:91-cv-20559] (cv) [Entry date 12/08/93]"
12/10/93	45	"LETTER dated 12/7/93 from Manuel M. Medeiros [5:91-cv-20559] (cv) [Entry date 12/14/93]"
12/14/93	46	"RESPONSE by defendant, plaintiff re order [41-1] [5:91-cv-20559] (cv)"

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 95-1201		
Date	**Doc. No.**	**Description** *(Part of Court Record - Not on Docket Sheet)**
12/22/93	51	"ORDER by Judge Ronald M. Whyte Status conference set for 10:30 1/14/94;, Case stayed as to 1/18/94 (Date Entered: 12/27/93) (cc: all counsel) [5:91-cv-20559] (cv) [Entry date 12/27/93]"
01/13/94	*	"PARTIES SECOND STIPULATION AND COURT ORDER"
01/13/94	53	"MEMORANDUM by plaintiff Vicky M. Lopez in support of 2nd stip & order. [5:91-cv-20559] (cv) [Entry date 01/14/94]"
01/14/94	54	"MINUTES: (C/R Jo Ann Bryce) INITIAL CASE MANAGEMENT CONFERENCE HELD. Court will issue order re: panel [5:91-cv-20559] (cv) [Entry date 01/19/94]"
01/18/94	55	"MEMORANDUM by plaintiff David Serena in support of 2nd stipulation & order [5:91-cv-20559] (cv) [Entry date 01/19/94]"
01/20/94	56	"MEMORANDUM by defendant Monterey County in support of 2nd stipulation and order [5:91-cv-20559] (cv)"
01/21/94	57	"ORDER by Judge Ronald M. Whyte denying motion to intervene [49-1], denying motion for limited to intervene [42-1] Deadline for additional points supporting the new proposal due by 1/18/94; responses due by 1/28/94;

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 95-1201		
Date	**Doc. No.**	**Description** *(Part of Court Record - Not on Docket Sheet)**
01/21/94 Cont'd	57	reply filed by 2/4/94. (Date Entered: 1/26/94) (cc: all counsel) [5:91-cv-20559] (cv) [Entry date 01/26/94]"
01/28/94	62	"OBJECTIONS to 2nd stipulation and proposed order [5:91-cv-20559] (cv) [Entry date 01/31/94]"
01/28/94	69	"MOTION for leave to file brief Amicus Curiae and brief of the Governor of the State of California as Amicus Curiae [5:91-cv-20559] (cv) [Entry date 02/16/94]"
01/31/94	63	"ADDENDUM filed to objection [62-1] [5:91-cv-20559] (cv) [Entry date 02/01/94]"
02/04/94	64	"REPLY by plaintiff Vicky M. Lopez re opposition [59-1] [5:91-cv-20559] (cv) [Entry date 02/07/94]"
02/04/94	65	"REPLY by plaintiff Vicky M. Lopez re objection [62-1] [5:91-cv-20559] (cv) [Entry date 02/07/94]"
02/04/94	66	"RESPONSE by defendant Monterey County re objection [62-1] [5:91-cv-20559] (cv) [Entry date 02/07/94]"
02/04/94	67	"RESPONSE by defendant Monterey County re motion to intervene [58-1] [5:91-cv-20559] (cv) [Entry date 02/07/94]"

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 95-1201		
Date	**Doc. No.**	**Description** *(Part of Court Record - Not on Docket Sheet)**
02/04/94	68	"RESPONSE by defendant Monterey County to filing of Governor's Amicus curiae brief. [5:91-cv-20559] (cv) [Entry date 02/07/94]"
02/22/94	70	"MOTION by plaintiff David Serena to vacate judicial appointment, or in the alternative, for order to shorten the terms of certain judicial appointments to the Monterey County Municipal Court District. [5:91-cv-20559] (cv)"
02/23/94	73	"ORDER by Judge Ronald M. Whyte scheduling hearing re: second stipulation and proposed order for 2/25/94 at 2:30 pm () (cc: all counsel) [5:91-cv-20559] (kk) [Entry date 02/28/94]"
02/25/94	74	"MINUTES: of Judge Whyte (C/R Shelly Coffey) three judge court hearing re: stipulation & order-held [5:91-cv-20559] (mh) [Entry date 03/02/94]"
03/01/94	75	"ORDER by Judge Whyte for an order requiring submission of election plan for preclearance; alternative order to show cause & for an order enjoining election pending preclearance [SEE DOCUMENT FOR DETAILS] (Date Entered: 3/9/94) (cc: all counsel) [5:91-cv-20559] (mh) [Entry date 03/09/94]"

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 95-1201		
Date	**Doc. No.**	**Description** *(Part of Court Record - Not on Docket Sheet)**
03/07/94	76	"ORDER by Judge Ronald M. Whyte setting hearing on motion to vacate judicial appointment [70-1] 1:30 3/31/94, setting hearing on motion for order to shorten the terms of certain judicial appointments to the Monterey County Municipal Court District. [70-2] 1:30 3/31/94; Opposition filed by 3/16/94; reply filed by 3/23/94 (Date Entered: 3/11/94) (cc: all counsel) [5:91-cv-20559] (cv) [Entry date 03/11/94]"
03/15/94	*	"RESPONSE OF INTERVENOR STATE TO MOTION OF PLAINTIFFS TO VACATE JUDICIAL APPOINTMENTS OR TO SHORTEN TERMS"
03/16/94	77	"STIPULATION for hearing to show cause before three judge panel on 3/31/94 at 1:30 p.m. [5:91-cv-20559] (jv) [Entry date 03/17/94]"
03/16/94	78	"DECLARATION by Douglas C. Holland on behalf of defendant Monterey County re stipulation [77-1] [5:91-cv-20559] (jv) [Entry date 03/17/94]"
03/25/94	84	"MOTION by intervenor Michael S. Fields for leave to file brief Amicus Curiae and request to be placed on the mailing list, proposed brief attached. [5:91-cv-20559] (cv) [Entry date 03/31/94]"

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 95-1201		
Date	**Doc. No.**	**Description** *(Part of Court Record - Not on Docket Sheet)**
3/25/94	"--"	"RECEIVED Brief Amicus Curiae and exhibits submitted by intervenor Michael S. Fields [5:91-cv-20559] (cv) [Entry date 03/31/94]"
03/25/94	85	"EXHIBITS re document received [0-0] [5:91-cv-20559] (cv) [Entry date 03/31/94]"
03/29/94	83	"RESPONSE of the State of Calif to Stipulations of Plaintiffs' and Monterey County for hearing on order to show cause. [5:91-cv-20559] (cv)"
04/07/94	86	"LETTER dated 4/4/94 from T.A. Quinn re: 4 letters [5:91-cv-20559] (cv) [Entry date 4/11/94]"
04/25/94	90	"LETTER dated 4/20/94 from T. Anthony Quinn re: boundary limits and response to 4/14/94 memorandum [5:91-cv-20559] (kk) [Entry date 04/26/94]"
05/03/94	91	"TENTATIVE ORDER by Judge Ronald M. Whyte Requiring county to hold November elections pursuant to an interim plan and denying motion to vacate judicial appointment or shorten terms except to the extent that the court by this order has determined that the terms of those elected in November should be shorted. Objection to this ruling filed by

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Date	**Doc. No.**	**Description** *(Part of Court Record - Not on Docket Sheet)**
05/03/94 Cont'd	91	5/13/94. Matter submitted as of that date. [70-1] (Date Entered: 5/6/94) (cc: all counsel) [5:91-cv-20559] (cv) [Entry date 05/06/94]"
05/13/94	94	"OBJECTIONS by plaintiff David Serena, plaintiff Jesse G. Sanchez, plaintiff William A. Melendez, plaintiff Crescencio Padilla, plaintiff Vicky M. Lopez to order [91-1] [5:91-cv-20559] (cv)"
05/13/94	95	"RESPONSE by defendant Monterey County re order [91-1] [5:91-cv-20559] (cv)"
05/13/94	96	"MOTION by intervenor-defendant California,[3] State of for leave to to participate as amicus curiae [5:91-cv-20559] (cv) [Entry date 05/16/94]"
05/13/94	97	"MEMORANDUM by intervenor-defendant California,[4] State of in support of motion for leave to to participate as amicus curiae [96-1] [5:91-cv-20559] (cv) [Entry date 05/16/94]"

[3] Docket Entry No. 96 is incorrectly designated as a document filed by the State of California. The correct designation should be the United States.

[4] Docket Entry No. 97 is incorrectly designated as a document filed by the State of California. The correct designation should be the United States.

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 95-1201		
Date	**Doc. No.**	**Description** *(Part of Court Record - Not on Docket Sheet)**
05/13/94	98	"BRIEF FILED by intervenor-defendant California,[5] State of regarding motion for leave to to participate as amicus curiae [96-1] [5:91-cv-20559] (cv) [Entry date 05/16/94]"
05/13/94	"--"	"RECEIVED submitted by intervenor-defendant California, State of re: [96-1] [5:91-cv-20559] (cv) [Entry date 05/16/94]"
05/19/94	99	"ORDER by Judge Ronald M. Whyte re response to Amicus brief [98-1] should do so by 5/20/94. (Date Entered: 5/19/94) (cc: all counsel) [5:91-cv-20559] (cv)"
05/24/94	103	"LETTER date 5/18/94 from T. Anthony Quinn Re: amicus curiae brief [5:91-cv-20559] (cv) [Entry date 05/25/94]"
06/02/94	105	"ORDER by Judge Ronald M. Whyte granting motion for leave to to participate as amicus curiae [96-1], denying motion to vacate judicial appointment [70-1] (Date Entered: 6/8/94) (cc: all counsel) [5:91-cv-20559] (cv) [Entry date 06/08/94]"

[5] Docket Entry No. 98 is incorrectly designated as a document filed by the State of California. The correct designation should be the United States.

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 95-1201		
Date	**Doc. No.**	**Description** *(Part of Court Record - Not on Docket Sheet)**
07/07/94	107	"REPORTER'S TRANSCRIPT; Date of proceedings: 3/31/94 (C/R: Shelly Coffey) [5:91-cv-20559] (cv)"
11/03/94	108	"MINUTES: (C/R Shelly Coffey) for three judge panel of Judge Ronald M. Whyte and Judge James Ware and Judge Mary Schroeder. Briefs to be submitted by 11/11/94. [5:91-cv-20559] (cv) [Entry date 11/09/94]"
11/10/94	109	"MEMORANDUM by Plaintiff David Serena post 11/3/94 hearing [5:91-cv-20559] (cv)"
11/14/94	111	"SUPPLEMENT by Intervenor-Defendant California, State of memo [5:91-cv-20559] (cv) [Entry date 11/16/94]"
11/14/94	112	"BRIEF FILED by the US responding to Equal Protection Claims raised by defendant-Intervenor State of California [5:91-cv-20559] (cv) [Entry date 11/16/94]"
11/15/94	113	"BRIEF FILED by defendant Monterey County responding to Equal Protection claims raised by defendant-Intervenor State of California. [5:91-cv-20559] (cv) [Entry date 11/16/94]"
12/15/94	114	"NOTICE of recent decision [5:91-cv-20559] (cv) [Entry date 12/19/94]"

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 95-1201		
Date	**Doc. No.**	**Description** *(Part of Court Record - Not on Docket Sheet)**
12/20/94	115	"ORDER by Judge Ronald M. Whyte enjoining elections pending preclearance of permanent plan except for court-ordered special election in 1995 (Date Entered: 12/22/94) (cc: all counsel) [5:91-cv-20559] (cv) [Entry date 12/22/94]"
12/22/94	*	Letter from Douglas C. Holland to Three Judge Court
01/06/95	*	Letter from Douglas C. Holland to Three Judge Court
01/07/95	*	"PLAINTIFFS' SECOND NOTICE REGARDING ELECTION SCHEDULE PROPOSED BY MONTEREY COUNTY"
01/10/95	118	"ORDER by Judge Ronald M. Whyte to clarify order dated 12/20/94 (Date Entered: 1/11/95) (cc: all counsel) [5:91-cv-20559] (cv) [Entry date 01/11/95]"
01/10/95	119	"NOTICE by defendant Monterey County 2nd notice re: election schedule proposed by Monterey County [5:91-cv-20559] (cv) [Entry date 01/11/95]"[6]

[6] Docket Entry No. 119 is incorrectly designated as a document filed by Monterey County. The correct designation should be the Plaintiffs.

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 95-1201		
Date	**Doc. No.**	**Description** *(Part of Court Record - Not on Docket Sheet)**
01/18/95	120	"ORDER by Judge Ronald M. Whyte dismissing party Michael S. Fields [58-1] (Date Entered: 01/27/95) (cc: all counsel) [5:91-cv-20559] (gm) [Entry date 01/27/95]"
02/15/95	121	"LETTER dated 02/13/95 from Joaquin G. Avila, Barbara Y. Phillips, Douglas Holland, William F. Murphy [5:91-cv-20559] (gm) [Entry date 02/21/95]"
03/08/95	122	"NOTICE or recent determination by the United States under section 5 of the voting rights act. [5:91-cv-20559] (gm) [Entry date 03/30/95]"
03/10/95	123	"MOTION-Request of Stephen A. Sillman, Presiding Judge of the Monterey County Municipal Court for limited intervention in his official capacity as presiding Judge before Judge Ronald M. Whyte to intervene [5:91-cv-20559] (gm) [Entry date 04/03/95]"
03/10/95	124	"MEMORANDUM of points and authorities by Intervenor Stephen A. Sillman in support of motion to intervene [123-1] [5:91-cv-20559] (gm) [Entry date 04/03/95]"
03/10/95	125	"DECLARATION of Honorable Stephen A. Sillman on behalf of Intervenor Stephen A. Sillman re motion to intervene [123-1] [5:91-cv-20559] (gm) [Entry date 04/03/95]"

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 95-1201		
Date	**Doc. No.**	**Description** *(Part of Court Record - Not on Docket Sheet)**
03/10/95	126	"REQUEST for modification of December 20, 1994 and January 10, 1995 orders by Intervenor Stephen A. Sillman for [5:91-cv-20559] (gm) [Entry date 04/03/95]"
03/10/95	127	"PROOF OF SERVICE by Intervenor Stephen A. Sillman of documents from 123 to 126 [5:91-cv-20559] (gm) [Entry date 04/03/95]"
03/21/95	128	"ORDER the court hereby requests that any party wishing to respond to Judge Sillman's motion to intervene in his official capacity as presiding judge, do so by 3/29/95 by Judge Ronald M. Whyte (Date Entered: 04/04/95) (cc: all counsel) [5:91-cv-20559] (gm) [Entry date 04/04/95]"
03/22/95	*	Letter from Marguerite Mary Leoni to Three Judge Court
03/27/95	129	"STATEMENT of non-opposition to proposed intervention of presiding judge Sillman and to proposed modification of election order by Intervenor-Defendant California, State of [5:91-cv-20559] (gm) [Entry date 04/04/95] [Edit date 04/04/95]"
03/29/95	133	"RESPONSE by Plaintiff David Serena, Plaintiff Jesse G. Sanchez, Plaintiff William A. Melendez, Plaintiff Crescencio Padilla, Plaintiff Vicky M. Lopez re order setting deadline to

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Date	**Doc. No.**	**Description** *(Part of Court Record - Not on Docket Sheet)**
03/29/95 Cont'd	133	respond to motion to intervene [128-1] [5:91-cv-20559] (gm) [Entry date 04/07/95]"
03/30/95	134	"ORDER by Judge Ronald M. Whyte the court has reviewed the above-entitled request for extension and good cause appearing, it is hereby ordered that the time for the defendant Monterey counhty, California to file its opposition to the motion for intervention filed by Judge Stephen Sillman is extended to 03/31/95 answer Date Entered: 04/10/95) (cc: all counsel) [5:91-cv-20559] (gm) [Entry date 04/10/95]"
03/31/95	135	"MOTION before Judge Ronald M. Whyte by defendant Monterey County for modification of 12/20/94, and 01/10/95, court orders; and opposition to request of Stephen A. Sillman for intervention [5:91-cv-20559] (gm) [Entry date 04/10/95]"
04/03/95	136	"United States RESPONSE re motion for modification of 12/20/94, and 01/10/95, court orders; and opposition to request of Stephen A. Sillman for intervention [135-1] [5:91-cv-20559] (gm) [Entry date 04/10/95]"
04/06/95	138	"OBJECTIONS by Amicus Curiae Alan Hedegard to Monterey County's proposal to grant 6 year terms of office to the winners of

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 95-1201		
Date	**Doc. No.**	**Description** *(Part of Court Record - Not on Docket Sheet)**
04/06/95 Cont'd	138	the 1995 special elections [5:91-cv-20559] (gm) [Entry date 04/10/95]"
04/12/95	139	"REPLY by Intervenor Stephen A. Sillman re response [136-1] [5:91-cv-20559] (bfv) [Entry date 04/17/95]"
04/13/95	141	"ORDER by Judge Ronald M. Whyte granting motion for modification of 12/20/94, and 01/10/95, court orders; and opposition to request of Stephen A. Sillman for intervention [135-1], denying motion to intervene [123-1] (Date Entered: 04/21/95) (cc: all counsel) [5:91-cv-20559] (gm) [Entry date 04/21/95]"
07/07/95	148	"LETTER dated 07/06/95 from Daniel G. Stone to Judge Whyte [5:91-cv-20559] (gm) [Entry date 07/12/95]"
07/18/95	149	"LETTER dated 07/18/95 from Joaquin G. Avila to Judge Whyte [5:91-cv-20559] (gm) [Entry date 07/19/95]"
09/07/95	150	"ORDER by Judge Ronald M. Whyte The parties are hereby requested to brief the effect of Miller v. Johnson, 95 Daily Journal D.A.R. 8495 on this case in their status conference statements for the Status conference set for 1:30 9/28/95; (Date Entered 09/14/95) (cc: all counsel) [5:91-cv-20559] (gm) [Entry date 09/14/95]"

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Date	**Doc. No.**	**Description** *(Part of Court Record - Not on Docket Sheet)**
09/21/95	151	"STATUS CONFERENCE STATEMENT by defendant Monterey County [5:91-cv-20559] (gm) [Entry date 09/27/95]"
09/22/95	152	"STATUS CONFERENCE STATEMENT (memorandum) by Intervenor-Defendant California, State of [5:91-cv-20559] (gm) [Entry date 09/27/95]"
09/22/95	153	"STATUS CONFERENCE STATEMENT by Plaintiff [5:91-cv-20559] (gm) [Entry date 09/27/95]"
09/22/95	154	"BRIEF FILED by Intervenor Stephen A. Sillman concerning Miller v. Johnson in response to the three-judge court's order of 09/07/95 [5:91-cv-20559] (gm) [Entry date 09/27/95]"
09/22/95	155	"EXHIBITS re brief [154-1] [5:91-cv-20559] (gm) [Entry date 09/27/95]"
09/22/95	156	"STATUS CONFERENCE STATEMENT by Intervenor Stephen A. Sillman [5:91-cv-20559] (gm) [Entry date 09/27/95]"
09/22/95	157	"PROOF OF SERVICE by Intervenor Stephen A. Sillman of brief concerning Miller v. Johnson in response to the three-judge court's order of 09/07/95; exhibits to brief and status conference statement. [5:91-cv-20559] (gm) [Entry date 09/27/95]"

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 95-1201		
Date	**Doc. No.**	**Description** *(Part of Court Record - Not on Docket Sheet)**
09/27/95	*	Letter from Marguerite Mary Leoni to Three Judge Court
09/28/95	*	Letter from United States Department of Justice to Three Judge Court
09/28/95	158	"MINUTES: Status conference. The court will prepare the order. (C/R Lee-Ann Shortridge) [5:91-cv-20559] (gm) [Entry date 10/11/95]"
09/29/95	*	Letter from Marguerite Mary Leoni to Three Judge Court
10/03/95	159	"ORDER by Judge Ronald M. Whyte request for amicus curiae brief from United States (Date Entered: 10/11/95) (cc: all counsel) [5:91-cv-20559] (gm) [Entry date 10/11/95]"
10/03/95	160	"LETTER dated 09/29/95 from Manuel M. Medeiros from California, State of [5:91-cv-20559] (gm) [Entry date 10/11/95]"
10/04/95	161	"REPORTER'S TRANSCRIPT; Date of proceedings: 09/28/95 (C/R: Lee-Ann Shortridge) [5:91-cv-20559] (gm) [Entry date 10/11/95]"
10/05/95	*	Letter from Joaquin G. Avila to Three Judge Court (election schedule)

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 95-1201		
Date	**Doc. No.**	**Description** *(Part of Court Record - Not on Docket Sheet)**
10/10/95	162	"BRIEF FILED by defendant Monterey County[7] regarding order [159-2] [5:91-cv-20559] (gm) [Entry date 10/12/95]"
10/13/95	163	"LETTER dated 10/10/95 from Douglas Holland from Monterey County [5:91-cv-20559] (gm) [Entry date 10/24/95]"
10/17/95	164	"RESPONSE by Intervenor-Defendant California, State of re brief [162-1] [5:91-cv-20559] (gm) [Entry date 10/24/95]"
10/18/95	165	"RESPONSE by Plaintiff re response [164-1] [5:91-cv-20559] (gm) [Entry date 10/24/95]"
10/19/95	*	Letter from Marguerite Mary Leoni to Three Judge Court
11/01/95	166	"ORDER by Judge Ronald M. Whyte modifying injunction (Date Entered: 11/09/95) (cc: all counsel) [5:91-cv-20559] (gm) [Entry date 11/09/95]"
11/08/95	167	"LETTER dated 11/03/95 from Douglas Holland from Monterey County [5:91-cv-20559] (gm) [Entry date 11/09/95]"

[7] Docket Entry No. 162 is incorrectly designated as a document filed by Monterey County. The correct designation should be the United States.

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 95-1201		
Date	**Doc. No.**	**Description *(Part of Court Record - Not on Docket Sheet)**
11/14/95	168	"NOTICE by Plaintiffs to opposing parties of intent to file a motion for leave to file a motion for reconsideration and to file an expedited motion for adjudication of motion for reconsideration [5:91-cv-20559] (gm) [Entry date 11/17/95]"
11/20/95	169	"ANSWER by Intervenor-Defendant California, State of to complaint [1-1] [5:91-cv-20559] (gm) [Entry date 11/28/95]"
11/20/95	170	"LETTER dated 11/15/95 from Douglas Holland from Monterey County [5:91-cv-20559] (gm) [Entry date 11/28/95]"
11/20/95	172	"ORDER clarifying order modifying injunction by Judge Ronald M. Whyte (Date Entered: 12/05/95) (cc: all counsel) [5:91-cv-20559] (gm) [Entry date 12/05/95]"
11/21/95	171	"MOTION before Judge Ronald M. Whyte by Plaintiff for leave to file a motion for reconsideration [5:91-cv-20559] (gm) [Entry date 11/28/95]"
11/21/95	"--"	"RECEIVED Order (Plaintiff) re: [171-1] [5:91-cv-20559] (gm) [Entry date 11/28/95]"
11/21/95	173	"ORDER approving resolution and modified election schedule by Judge Ronald M. Whyte (Date Entered: 12/05/95) (cc: all counsel) [5:91-cv-20559] (gm) [Entry date 12/05/95]"

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 95-1201		
Date	**Doc. No.**	**Description *(Part of Court Record - Not on Docket Sheet)**
11/22/95	174	"OPPOSITION by Intervenor-Defendant California, State of to motion for leave to file a motion for reconsideration [171-1] [5:91-cv-20559] (gm) [Entry date 12/05/95]"
11/22/95	175	"ORDER by Judge James Ware Plaintiff is ordered to file and serve the motiion on or before 11/29/95. Upon filing, the motion shall be deemed submitted for decision without oral argument. (Date Entered: 12/05/95) (cc: all counsel) [5:91-cv-20559] (gm) [Entry date 12/05/95]"
11/28/95	176	"United States' REQUEST to file response brief [5:91-cv-20559] (gm) [Entry date 12/05/95]"
11/28/95	*	Letter from Marguerite Mary Leoni to Three Judge Court
11/29/95	177	"MOTION before Judge Ronald M. Whyte by Plaintiff for reconsideration and modification of the court's 11/01/95, order modifying injunction [5:91-cv-20559] (gm) [Entry date 12/05/95]"
11/29/95	178	"DECLARATION by Joaquin G. Avila on behalf of Plaintiff re motion for reconsideration and modification of the court's 11/01/95, order modifying injunction [177-1] [5:91-cv-20559] (gm) [Entry date 12/05/95]"

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 95-1201		
Date	**Doc. No.**	**Description** *(Part of Court Record - Not on Docket Sheet)**
11/29/95	"--"	"RECEIVED Order (Plaintiff) re: [177-1] [5:91-cv-20559] (gm) [Entry date 12/05/95]"
11/30/95	179	"ORDER by Judge James Ware denying motion for reconsideration and modification of the court's 11/01/95, order modifying injunction [177-1] () (cc: all counsel) [5:91-cv-20559] (kk) [Entry date 12/11/95]"
11/30/95	189	"NOTICE OF APPEAL by Plaintiff David Serena, Plaintiff William A. Melendez, Plaintiff Crescencio Padilla, Plaintiff Vicky M. Lopez from Dist. Court decision Scheduling order modifying injunction [166-1], order [166-2] Fee status paid [5:91-cv-20559] (lmm) [Entry date 01/08/96]"
12/06/95	180	"NOTICE by Plaintiff of intent to file an expedited motion for stay of order modifying injunction [5:91-cv-20559] (kk) [Entry date 12/11/95]"
12/12/95	182	"Expedited MOTION before Judge Ronald M. Whyte by Plaintiff to stay of order modifying injunction entered on 11/09/95, pending appeal [5:91-cv-20559] (gm) [Entry date 12/19/95]"
12/13/95	"--"	"RECEIVED Order (Plaintiff) re: [182-1] [5:91-cv-20559] (gm) [Entry date 12/19/95]"

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 95-1201		
Date	**Doc. No.**	**Description** *(Part of Court Record - Not on Docket Sheet)**
12/13/95	183	"PROOF OF SERVICE by Plaintiff of order received [0-0] [5:91-cv-20559] (gm) [Entry date 12/19/95]"
12/14/95	184	"BRIEF as amicus curiae in support of plaintiffs' expedited motion for stay pending appeal by United States' [5:91-cv-20559] (gm) [Entry date 12/19/95]"
12/15/95	*	Letter from Manuel M. Medeiros to Deputy Clerk
12/18/95	185	"OPPOSITION by Intervenor Stephen A. Sillman to motion to stay of order modifying injunction entered on 11/09/95, pending appeal [182-1] [5:91-cv-20559] (gm) [Entry date 12/19/95]"
12/18/95	186	"OPPOSITION by Intervenor-Defendant California, State of to motion to stay of order modifying injunction entered on 11/09/95, pending appeal [182-1] [5:91-cv-20559] (gm) [Entry date 12/19/95]"
01/02/ 96[‡]	187	"ORDER by Judge Ronald M. Whyte denying motion to stay of order modifying injunction

[‡] The date is incorrectly listed on the docket sheet. The correct date is January 2, 1996.

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 95-1201		
Date	**Doc. No.**	**Description** ***(Part of Court Record - Not on Docket Sheet)**
01/02/ 96 Cont'd	187	entered on 11/09/95, pending appeal [182-1] (Date Entered: 01/08/96) (cc: all counsel) [5:91-cv-20559] (gm) [Entry date 01/08/96]"
01/08/96	"--"	"FILING FEE: fee paid on 11/30/95 in the amount of $ 105.00, receipt # 96631. [5:91-cv-20559] (lmm)"
01/08/96	"--"	"Docket fee notification form and case information sheet to the Clerk of the Supreme Court of the United States in Washington, DC [5:91-cv-20559] (lmm)"
01/08/96	"--"	"Copy of notice of appeal and docket sheet to all counsel [5:91-cv-20559] (lmm)"
02/12/96	190	"Plaintiffs' Notice Regarding Continuing District Court's Jurisdiction"

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA,

Plaintiffs,

v.

MONTEREY COUNTY, CALIFORNIA,

Defendant.

NO. C-91 20559 WAI EAI

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF THREE JUDGE COURT VOTING RIGHTS ACTION

INTRODUCTION

1. This is a voting rights action filed pursuant to Section 5 of the Voting Right Act, 42 U.S.C. 1973 c, seeking both declaratory and injunctive relief. Under Section 5, a covered jurisdiction such as Monterey County, California, cannot enforce or implement any voting qualification or prerequisite to voting, or standard, practice, or procedure with

respect to voting different from that in force or effect on the date of political subdivision's coverage unless such change affecting voting has been approved pursuant to Section 5. Approval under Section 5 is secured by submitting the change affecting voting to either the United States Attorney General or the United States District Court for the District of Columbia for a determination that such change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. Until such Section 5 approval is secured, the changes affecting voting cannot be implemented or enforced in any elections. This complaint alleges that applicable Monterey County Ordinances consolidating judicial districts in Monterey County have not secured the requisite Section 5 approval. Plaintiffs seek an Order from this Court permanently enjoining the enforcement or implementation of these County Ordinances until the requisite Section 5 approval is secured. If such approval is not forthcoming, Plaintiffs will seek as a remedy the implementation of a temporary and permanent single member district based election plan for the selection of judges to the Monterey County Municipal Court District. Plaintiffs will also seek in conjunction with the implementation of any temporary and permanent single member district based election plan, an Order shortening the terms for the judges of the Monterey County Municipal Court District and a special election for electing judges to the Monterey County Municipal Court District.

JURISDICTION

2. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 1973 c, 28 U.S.C. §§ 1343 (3) & (4), 28 U.S.C. § 2201.

PARTIES

3. Plaintiffs VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, are citizens of the United States, and

registered voters residing in Monterey County, California.

4. Defendant MONTEREY COUNTY is a governmental entity organized pursuant to the laws of the State of California.

5. Defendant MONTEREY COUNTY is a political subdivision subject to the requirements of Section 5 of the Voting Rights Act. 42 U.S.C. § 1973 c.

FACTS

6. All voting qualifications or prerequisites to voting, or standards, practices, or procedures with respect to voting enacted, adopted, or implemented by Monterey County on or after November 1, 1968 must be submitted for Section 5 approval. 42 U.S.C. § 1973 c.

7. Pursuant to West's Ann.Cal.Gov. Code §§ 25200 and 71040, the Monterey County Board of Supervisors has the authority to modify and consolidate municipal and justice court districts.

8. On January 13, 1976, the Monterey County Board of Supervisors passed and adopted Ordinance No. 2139.

9. Monterey County Ordinance No. 2139 eliminated the Pacific Grove Judicial District, the King City-Greenfield Judicial District, and the San Ardo Judicial District.

10. Monterey County Ordinance No. 2139 divided Monterey County into the Monterey-Carmel Judicial District, the Salinas Judicial District, the Castroville-Pajaro Judicial District, and the Soledad-Gonzales Judicial District.

11. Monterey County Ordinance No. 2139 is a voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting enacted, adopted, or implemented by Monterey County on or after November 1, 1968.

12. Monterey County Ordinance No. 2139 is a change affecting voting which must be submitted for approval pursuant to Section 5 of the Voting Rights Act. 42 U.S.C. § 1973 c.

13. On June 5, 1979, the Monterey County Board of Supervisors passed and adopted Ordinance No. 2524.

14. Monterey County Ordinance No. 2524 consolidated the Monterey Peninsula Judicial District, the North Monterey County Judicial District, and the Salinas Judicial District into the Monterey County Municipal Court District.

15. As a result of Monterey County Ordinance No. 2524, Monterey County was divided into the Monterey County Municipal Court District and the Central Judicial District and the Southern Judicial District

16. Monterey County Ordinance No. 2524 is a voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting enacted, adopted, or implemented by Monterey County on or after November 1, 1968.

17. Monterey County Ordinance No. 2524 is a change affecting voting which must be submitted for approval pursuant to Section 5 of the Voting Rights Act. 42 U.S.C. § 1973 c.

18. On August 2, 1983, the Monterey County Board of Supervisors passed and adopted Ordinance No. 2930.

19. Monterey County Ordinance No. 2930 consolidated the Monterey County Judicial District, the Central Judicial District and the Southern Judicial District into the Monterey County Municipal Court District.

20. As a result of Monterey County Ordinance No. 2930, there is only one Monterey County Municipal Court District.

21. Monterey County Ordinance No. 2930 is a voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting enacted, adopted, or implemented by Monterey County on or after November 1, 1968.

22. Monterey County Ordinance No. 2930 is a change affecting voting which must be submitted for approval

pursuant to Section 5 of the Voting Rights Act. 42 U.S.C. § 1973 c.

23. Based upon information and belief, Monterey County Ordinance Nos. 2139, 2524, and 2930, have not been submitted to the United States Attorney General for a determination that such changes do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group.

24. Based upon information and belief, no judgment has been obtained from the United States District Court for the District of Columbia pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, declaring that Monterey County Ordinance Nos. 2139, 2524, and 2930, do not have the purpose and do not have the effect of denying or abridging the right to vote on account on race, color, or membership in a language minority group.

25. Based upon information and belief, since Monterey County Ordinance Nos. 2139, 2524, and 2930, have not received the requisite approval pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, these Ordinances are legally unenforceable.

26. Based upon information and belief, notwithstanding the lack of approval as required by Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, Defendant MONTEREY COUNTY has implemented the changes affecting voting as specified in Monterey County Ordinance Nos. 2139, 2524, and 2930.

REQUEST FOR THREE JUDGE COURT

27. Pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, the convening of a Three Judge Court is requested.

CLAIM FOR RELIEF

28. Plaintiffs reallege paragraphs 1 through 27 above and incorporate the same as though fully set forth herein.

29. Plaintiffs allege that the adopted and implemented changes in the modification and consolidation of judicial districts as specified in Monterey County Ordinance Nos. 2139, 2524, and 2930, constitute changes affecting voting within the meaning of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c.

30. Plaintiffs allege that the failure of Defendant MONTEREY COUNTY to obtain approval of the changes in the modification and consolidation of judicial districts as specified in Monterey County Ordinance Nos. 2139, 2524, and 2930, either through a declaratory judgement of the United States District Court for the District of Columbia or through the administrative process conducted by the United States Attorney General, constitutes a violation of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c.

31. Plaintiffs allege that the failure of Defendant MONTEREY COUNTY to secure the requisite Section 5, 42 U.S.C. § 1973 c, approval of Monterey County Ordinance Nos. 2139, 2524, and 2930, renders the implementation of those Ordinances legally unenforceable.

INJUNCTIVE AND DECLARATORY RELIEF

32. This is also an action for declaratory, preliminary and permanent injunctive relief sought pursuant to 28 U.S.C. §§ 2201 and 2202 and Fed.R.Civ.P. 57 and 65. Plaintiffs seek a declaration that the adoption and implementation of Monterey County Ordinance Nos. 2139, 2524, and 2930, violate the protections afforded by Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, thereby making injunctive relief appropriate. Unless enjoined, Defendant MONTEREY COUNTY will continue with the enforcement and implementation of the legally unenforceable changes affecting the voting rights of language, racial, and ethnic minority groups residing in Monterey County, California.

BASIS FOR EQUITABLE RELIEF

33. Plaintiffs have no plain, adequate, or complete remedy at law to redress the wrongs alleged herein and this suit

for declaratory judgment and injunctive relief is their only means of securing adequate redress from the Defendants' unlawful practices. Plaintiffs will continue to suffer irreparable injury from the Defendants's acts, policies and practices set forth herein unless enjoined by this Court.

PRAYER

WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment granting Plaintiffs:

(a) A declaration that the adoption and implementation of Monterey County Ordinance Nos. 2139, 2524, and 2930, constitute changes affecting voting within the meaning of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, and are legally unenforceable absent the requisite Section 5 approval;

(b) A permanent injunction restraining and enjoining the Defendants, its officers, agents, employees, attorneys and successors in office and all other persons in active concert and participation with them, from any further implementation or enforcement of Monterey County Ordinance Nos. 2139, 2524, and 2930, unless and until said changes affecting voting are approved pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c;

(c) An order, in the event the requisite approval pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, is not secured, shortening the terms of the judges of the Monterey County Municipal Court District and requiring a special election for the judges of the

Monterey County Municipal Court District, said election based upon the judicial districts in existence on November 1, 1968; or, alternatively,

(d) An order, in the event the requisite approval pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, is not secured, requiring the implementation of a temporary and permanent single member district based election plan for the selection of judges to the Monterey County Municipal Court District, said plan to comply with Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, by not fragmenting or over concentrating language, racial and ethnic minority communities of interest and denying racial and ethnic minority voters of an equal opportunity to participate in the political process and elect candidates of their choice;

(e) An order granting Plaintiffs their costs of court, necessary expenses of litigation and reasonable attorneys' fees to be adjudged against the Defendant as provided for under 42 U.S.C. §§ 1973 l (e) and 1988;

(f) An order retaining jurisdiction to render such further and additional orders as the Court may, from time to time, deem appropriate; and

(g) An order granting such other additional relief at law or in equity as may be deemed appropriate.

DATED: September 6, 1991

JOAQUIN G. AVILA
BARBARA Y. PHILLIPS
By:

/s/

JOAQUIN G. AVILA
Attorney for Plaintiffs

(Summons Omitted in Printing)

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, vs. MONTEREY COUNTY, CALIFORNIA, Defendant.	NO. C-91 20559 WAI EAI ANSWER TO COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

The Defendant, Monterey County, California, ("Monterey County") answers the Plaintiffs' Complaint for Injunctive and Declaratory Relief as follows:

1. Monterey County acknowledges that the Complaint has purportedly been filed pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973 c, and purportedly seeks declaratory and injunctive relief. Monterey County further acknowledges that pursuant to the express terms of Section 5, a voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date of the political subdivision's coverage must be

approved pursuant to Section 5. Approval under Section 5 is secured by submitting the change affecting voting to either the United States Attorney General or the United States District Court for the District of Columbia for a determination that the proposed change does not have the purpose, and will not have the effect, of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Until such Section 5 approval is secured, no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure. Monterey County further acknowledges, but does not admit the allegation, that the Complaint alleges that applicable Monterey County ordinances consolidating judicial districts in Monterey County have not secured the requisite Section 5 approval. Monterey County also acknowledges that the Plaintiffs are seeking an Order from this court permanently enjoining the enforcement or implementation of certain specified ordinances until the requisite Section 5 approval is secured. Except as otherwise acknowledged in this paragraph, Monterey County denies having sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 1 of the Complaint, and on this basis denies such allegations.

2. Monterey County admits the allegations contained in Paragraph 2 of the Complaint.

3. Monterey County denies having sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 3 of the Complaint and on this basis denies such allegations.

4. Monterey County admits that Monterey County is a governmental entity organized under the laws of the State of California and further alleges that Monterey County is a legal subdivision of the State of California.

5. Monterey County admits that Monterey County is a political subdivision of the State of California subject to the requirements of Section 5 of the Voting Rights Act.

6. Monterey County admits the allegations contained in Paragraph 6 of the Complaint.

7. Monterey County admits that Monterey County has authority to modify and consolidate municipal and justice court districts but denies that at the times alleged in the Complaint such authority was exclusively vested in Monterey County. In this regard, Monterey County alleges that Article 6, Section 5, of the California State Constitution provides that the State Legislature must provide for the division of each County of the State, including Monterey County, into municipal and justice court districts and is required to provide for the organization and prescribe the jurisdiction of municipal and justice courts and the number, qualifications, and compensation of judges, officers, and employees.

8. Monterey County admits the allegations contained in Paragraphs 8, 9, 10, 11, and 12 of the Complaint; however, Monterey County alleges that the actions of Monterey County described in such paragraphs were affirmed, ratified, approved, and adopted by the State of California through adoption of Chapter 995 of the 1977 Statutes of the State of California. Monterey County further alleges that Chapter 995 of the 1977 Statutes of the State of California were binding on the County of Monterey, and Monterey County was therefore required to enforce and implement such provisions and conduct its elections in full compliance with such provisions.

9. Monterey County admits the allegations contained in Paragraphs 13, 14, 15, 16, and 17 of the Complaint; however, Monterey County alleges that the actions of Monterey County described in such paragraphs were affirmed, ratified, approved, and adopted by the State of California through the adoption of Chapter 694 of the 1979 Statutes of the State of California. Monterey County further alleges that pursuant to Chapter 694 of the 1979 Statutes of the State of California, Article 7 was added to Chapter 10 of Title 8 of the California Government Code, which in essence repealed the then existing provisions

relative to the establishment of judicial districts for the municipal court in Monterey County and enacted new provisions establishing a single judicial district for the municipal court in Monterey County. The provisions of this State statute were binding on the County of Monterey, and Monterey County was therefore required to enforce and implement such provisions and conduct its elections in full compliance with such provisions.

10. Monterey County admits the allegations contained in Paragraphs 18, 19, 20, 21, and 22 of the Complaint; however, Monterey County alleges that the actions of Monterey County described in such paragraphs were affirmed, ratified, approved, and adopted by the State of California through the adoption of Chapter 1249 of the 1983 Statutes of the State of California. Monterey County further alleges that Chapter 1249 of the 1983 Statutes of the State of California retained the single judicial district status of the municipal court of Monterey County and the provisions of this State statute were binding on Monterey County, and Monterey County was therefore required to enforce and implement such provisions and conduct its elections in full compliance with such provisions.

11. Monterey County admits the allegations contained in Paragraphs 23 and 24 of the Complaint; except that Monterey County alleges that the State of California, on or about October 30, 1984, with the full cooperation and participation of Monterey County, did submit Chapter 1249 of the 1983 Statutes of the State of California, together with Monterey County Ordinance No. 2930, to the United States Attorney General for a determination that such changes did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

12. Monterey County denies the allegations contained in Paragraph 25 of the Complaint and in this regard alleges that Chapter 1249 of the 1983 Statutes of the State of California did receive requisite approval pursuant to Section 5 of the Voting

Rights Act. Monterey County further alleges that approval of such Chapter 1249 constituted approval of Monterey County Ordinance No. 2930.

13. Monterey County denies the allegations contained in Paragraph 26 of the Complaint except that Monterey County admits that it did implement Monterey County Ordinance Nos. 2139, 2524, and 2930 as provided under the laws of the State of California.

14. In answering Paragraph 28 of the Complaint, Monterey County realleges Paragraphs 1 through 13 of this Answer.

15. Monterey County denies the allegations contained in Paragraphs 29, 30, 31, 32, and 33 to the Complaint.

16. Monterey County, as an affirmative defense, alleges that the Complaint fails to state a claim on which the relief requested in the Complaint can be granted.

17. Monterey County, as an affirmative defense, alleges that Plaintiffs have failed to join a party needed for the just adjudication of Plaintiffs' alleged claim pursuant to the requirements of Rule 19 of the Federal Rules of Civil Procedure. Monterey County is a political subdivision of the State of California, and the actions of Monterey County complained of in the Complaint were dependent upon affirmation, ratification, approval, or adoption by the State of California. In addition, the statutes of the State of California are binding and enforceable against Monterey County. Chapter 995, 1977 Statutes, Chapter 694, 1979 Statutes, and Chapter 1249, 1983 Statutes (collectively "the State Statutes") of the State of California, are voting qualifications or prerequisites to voting, or standard practice or procedure with respect to voting, applicable to Monterey County, enacted, adopted, or implemented on or after November 1, 1968. The State Statutes are changes affecting voting which must be submitted for approval pursuant to Section 5 of the Voting Rights Act. Based upon information and belief, Chapter 995, 1977 Statutes, and Chapter 694, 1979 Statutes,

have not been submitted to the United States District Court for the District of Columbia or the United States Attorney General pursuant to Section 5 of the Voting Rights Act. In order to fashion a full and complete remedy consistent with the claim of the Plaintiffs, if a remedy is warranted, the State of California should be joined as a party defendant to this action. The State of California is subject to the jurisdiction of this Court as to both service of process and venue, and can be made a party to this action without depriving this court of jurisdiction of the present parties.

WHEREFORE, Monterey County respectfully prays that this Court enter judgment:

(1) Denying each and every component of relief sought by the Plaintiffs;

(2) Granting Monterey County its costs of court, necessary expenses of litigation, and reasonable attorneys' fees; and

(3) Granting such additional relief at law or equity as may be deemed appropriate.

DATED: October 25, 1991. /s/
DOUGLAS C. HOLLAND
County Counsel

(Declaration of Service Omitted in Printing)

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Original Filed
JAN 09, 1991*
Richard W. Wieking
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA, Defendant.	NO. C-91-20559 WAI (EAI) STIPULATED TEMPORARY RESTRAINING ORDER THREE JUDGE COURT VOTING RIGHTS ACTION

Both the Plaintiffs and the Defendant in this action, which was filed pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, hereby stipulate, through their respective legal counsel, to the postponement of the time periods for the issuance of petitions for gathering signatures in lieu of filing fees and other applicable election filing periods and deadlines for the office of Municipal Court Judge for the Monterey County

*(Please note that year is incorrect. The year should be 1992.)

Municipal Court District. In accordance with the Memorandum Order of the California State Supreme Court in Wilson v. Eu (Assembly of State of Cal.), 54 Cal.3d 546, 286 Cal. Rptr. 625 (Cal. 1991), these election filing periods and deadlines shall commence on February 10, 1992. This postponement shall permit this Court to resolve Plaintiffs' Motion for Summary Judgment which shall be filed shortly.

This postponement of election schedules is necessary in order to avoid any irreparable damage which may result by conducting elections for the Monterey County Municipal Court District based upon changes in the law affecting voting which may be determined to be subject to the Section 5 preclearance provisions of the Voting Rights Act. 42 U.S.C. § 1973 c. Clark v. Roemer, __ U.S. __, __, 111 S.Ct. 2096, 2101 (1991). This postponement of election schedules can be further extended by Order of this Court. This Court has jurisdiction to issue this Stipulated Temporary Restraining Order pending the convening of a Three Judge Court. 28 U.S.C. § 2284 (b) (3).

Based upon the foregoing stipulation, IT IS HEREBY ORDERED that all applicable election filing periods and deadlines for the office of Municipal Court Judge for the Monterey County Municipal Court District be postponed until February 10, 1992, and shall conform to the same filing periods and deadlines established for members of the California State Legislature by the California Supreme Court in Wilson v. Eu (Assembly of State of Cal.), supra.

DATED: Jan. 7, 1991* WILLIAM A. INGRAM
UNITED STATES DISTRICT COURT JUDGE

Agreed as to Substance and Form:

DATED: 12/20/91 DOUGLAS C. HOLLAND
COUNTY COUNSEL
LEROY W. BLANKENSHIP

*(Please note that year is incorrect. The year should be 1992.)

DEPUTY COUNTY COUNSEL
By:
/s/
DOUGLAS C. HOLLAND
ATTORNEY FOR DEFENDANT

DATED: Dec. 19, 1991

JOAQUIN G. AVILA
BARBARA Y. PHILLIPS

By:
/s/

JOAQUIN G. AVILA
Attorney for Plaintiffs

Filed
JUN 24, 1992
Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA, Defendant.	NO. C-91-20559-RMW (EAI) NOTIFICATION OF REQUEST FOR THE CONVENING OF A THREE JUDGE COURT

Plaintiffs have requested that a court of three judges be convened, pursuant to 42 U.S.C. § 1973 c and 28 U.S.C. § 2284 (a), to determine this voting rights action. On May 11, 1992, the court issued a tentative decision, denying plaintiffs' request for the convening of a three judge court but requesting that the parties submit further briefing with respect to the issue. The court has read and considered both plaintiffs' and defendant's briefs and concludes that its tentative decision is wrong and that plaintiffs' request is, in fact, meritorious.

Plaintiffs filed this action pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, seeking both declaratory and injunctive relief. Plaintiffs' complaint alleges that between 1977 and 1983, the Monterey County Board of Supervisors adopted and implemented County Ordinances Nos. 2139, 2524

and 2930, consolidating the County's judicial districts into one county judicial district. The complaint further alleges that these ordinances have not received the necessary Section 5 preclearance. Without such preclearance, plaintiffs contend that defendant has held elections in violation of federal law.

Defendant answered the complaint, contending that the court cannot grant the relief requested by plaintiffs but can only, rather, order the defendant to submit the ordinances for preclearance. In addition, the defendant contends that the State of California should be joined as an indispensable party.

The standards for determining when a court of three judges should be convened are set forth in 28 U.S.C. § 2284 (a), which provides in relevant part that a three judge court "shall be convened when otherwise required by an Act of Congress ...." Section 5 of the Voting Rights Act (42 U.S.C. § 1973 c) specifically provides that any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of 28 U.S.C. § 2284. Accordingly, the court hereby notifies the chief judge of the circuit of plaintiffs' request for the convening of a three judge court.

DATED: JUNE 24, 1992

/s/
RONALD M. WHYTE
United States District Judge

Filed
APR 1, 1993
Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA, Defendant.	NO. C-91-20559-RMW (EAI) ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND DENYING DEFENDANT'S MOTIONS

PANEL: Circuit Judge Mary M. Schroeder and District Judges James Ware and Ronald M. Whyte

I. INTRODUCTION

Plaintiffs challenge the implementation of six Monterey County Ordinances governing the number of municipal and justice court election districts as violating Section 5 of the Voting Rights Act of 1965. Plaintiffs contend that the ordinances were not precleared by the Attorney General or by a declaratory judgment of the United States District Court for the District of Columbia as required by Section 5. Over a period of

twelve years, the six ordinances reduced ten judicial election districts to one. Plaintiffs, who are Latino voters, complain that the current voting procedure precludes their access to the judicial election process for the Municipal Court District. Although Latinos constitute 34% of the County's population, there is not a single Latino Municipal Court judge. Plaintiffs seek summary judgment declaring that preclearance was not obtained and, therefore, the ordinances, as a matter of law, cannot be implemented.

Monterey County ("County") asserts that preclearance is not necessary on the alternative grounds that either Section 5 is not applicable to the ordinances or that the ordinances received "implicit" clearance through the Justice Department's preclearance of state "enabling" legislation. The County also contends that the State of California is a necessary and indispensable party to this action and that, if the state cannot be joined, then the action must be dismissed.

Pursuant to the provisions of Title 28 U.S.C. § 2284, the motions were heard by a three-judge court consisting of Circuit Judge Mary M. Schroeder, District Judge James Ware and District Judge Ronald M. Whyte, on January 5, 1993. For the reasons set forth below, the court grants plaintiffs' motion to the extent it seeks an adjudication that the ordinances require preclearance and denies the County's motion.

II. BACKGROUND

Beginning in the late 1940's, the State of California became concerned with the need for lower court system reform. Sen.Con. Res. No. 19, 47 Stat. 3448 (1947); Judicial Council of California, *Report to the Governor and the Legislature* 13-73 (1948). In 1950, a constitutional amendment was approved which authorized the implementation of the Judicial Council's plan for lower court reorganization, aimed at the consolidation of municipal courts and justice courts. Cal. Const. art. VI, § 11 (1950); 49 Stats 1286 at 2268 and 49 Stats 1510-18 at 2681-702.

A parallel reorganization effort was undertaken by County. (See Declaration of Bradley Clark ("Clark"), Exhibit A at page 58). In the early 1950's, County consolidated its twenty-two (22) lower courts into ten (10) courts, consisting of two municipal and eight justice court districts. (Clark, "A" at page 59). Accordingly, as of November 1, 1968, the date that Section 5 became applicable to defendant, Monterey County had ten judicial election districts. Id. (See also, Plaintiffs' Reply Brief, page 2, footnote 3).

In 1972, Monterey County Ordinance No. 1852 was adopted. This ordinance reduced the number of judicial districts from ten to nine. Ordinance No. 1917, adopted eight months later, reduced the number of districts to eight. Thirteen months later, in 1973, Ordinance No. 1999 was adopted, which reduced the number of judicial districts to seven. In 1977, the judicial districts were consolidated by Ordinance No. 2139, which resulted in the elimination of three judicial election districts. County then had four judicial districts, one of which was eliminated by Ordinance No. 2524, adopted in 1980.

Finally, the three remaining judicial districts were consolidated into one judicial district, the Monterey County Municipal Court District, as a result of the adoption of Monterey County Ordinance No. 2930. The Monterey County Municipal Court District presently consists of ten (10) judges. West's Ann. Cal. Govt. Code § 73562. Although Latinos constitute 34% of the county's population, there is not a single Latino municipal court judge in Monterey County. (See Plaintiffs' Exhibit Nos. 1 and 2). Plaintiffs challenge the adoption of all six (6) ordinances on the basis that none of the ordinances received the necessary preclearance required by Section 5.

III. LEGAL STANDARDS

In addressing both plaintiffs' and County's motion for summary judgment, the court proceeds pursuant to the mandates of Rule 56 (c) of the Federal Rules of Civil Procedure, which provides that summary judgment shall be rendered if the

pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

With respect to County's alternative motion to dismiss/join, the court proceeds pursuant to the mandates of Rule 19 of the Federal Rules of Civil Procedure. Pursuant to Rule 19, the court must first determine if an absent party is "necessary" to the action. Confederated Tribes v. Lujan, 928 F.2d 1496, 1498 (9th Cir. 1991). If the absent party is deemed necessary to the action, and that party cannot be joined, the court must determine whether the party is "indispensable" so that "in equity and good conscience" the action should be dismissed. Id., quoting, Makah Indian Tribe v. Verity, 910 F.2d 555, 558 (9th Cir. 1990). With these standards in mind, the court analyzes the motions.

IV. DISCUSSION

A. COUNTY'S MOTION TO DISMISS OR FOR JOINDER

As noted above, the County has move to dismiss plaintiffs' action on the basis that the State of California is a necessary party to this action and that, since the State cannot be joined as a party defendant, the action must be dismissed. Alternately, the County moves to join the State of California as a necessary party defendant. County's motions are discussed separately below.

1. Necessary Party

As noted above, Rule 19 (a) of the Federal Rules of Civil Procedure contemplates a two-part analysis to aid the court in determining if an absent party is necessary. "First, the court must consider if complete relief is possible among those parties already in the action. Second, the court must consider whether the absent party has a legally protected interest in the outcome of the action. [Citations omitted]." Confederated Tribes, supra at page 1498.

County takes the position that the State is a necessary party to this action because the County enacted its ordinances only to implement state legislation. County also takes the position that its ordinances "implicitly" received the necessary preclearance as a result of the clearance received by the state statutes. Therefore, County argues, "it is futile for plaintiffs to proceed against County when the County's actions are derivative of, and wholly dependent upon, the preceding actions of the State." (County's Moving Brief, page 13, lines 21-23).

County's position, however, ignores the fact that it is the County's, not the State's, responsibility to seek preclearance of the ordinances at issue herein since it is the County which seeks to implement the ordinances. 42 U.S.C. § 1973c. Therefore, addressing the first part of the Rule 19(a) analysis, complete relief is possible among the parties already involved in this action since the only issue which this court may properly address is whether the particular County ordinances at issue herein are subject to the provisions of the Voting Rights Act, and therefore must be submitted for approval before enactment. Perkins v. Matthews, 400 U.S. 379, 383, 91 S.Ct. 431, 434 (1971), quoting Allen v. State Board of Elections, 393 U.S. 544, 558-559, 89 S.Ct. 817, 828 (1969).

The fact that the County has raised the issue that its ordinances received "implicit" clearance through the preclearance of certain state statutes does not require the court to reach a determination as to whether or not those state statutes also received the required preclearance. Rather, the court need only determine whether or not the state statutes incorporated or referred to the County ordinances at issue herein at the time that the statutes were submitted to the Attorney General for preclearance. Such a determination may be made by reference to the state statutes and the requests for preclearance, all of which is a matter of record before this court.

Accordingly, judgment against the County in this action would have no impact upon the State. A determination by this

court that the County Ordinances did not secure the necessary preclearance would not constitute a finding that the state statutes did not receive the necessary preclearance.

Similarly, the State has no legally protected interest in the outcome of this action. As stated above, the outcome of this action will have no impact whatsoever upon the State. The State statutes are before this court only insofar as they may serve to prove that the County did or did not secure the requisite Section 5 preclearance. Accordingly, the State is not a necessary party to this action. Therefore, the court denies County's motion to dismiss this action.

2. Indispensable Party

Rule 19(b) provides that the factors to be considered to determine whether a nonparty is indispensable are:

> (1) prejudice to any party or to the absent party;
>
> (2) whether relief can be shaped to lessen prejudice;
>
> (3) whether an adequate remedy, even if not complete, can be awarded without the absent party; and,
>
> (4) whether there exists an alternative forum.
>
> Confederated Tribes v. Lujan, 928 F.2d 1496, 1499 (9th Cir. 1991).

As discussed above, the result of this action will have no impact whatsoever upon the State. Therefore, no prejudice can result to the State by the failure to join the State as a defendant. Similarly, neither party will be prejudiced by the failure of the State to be joined. Adequate relief can be afforded to either party without the presence of the State. Therefore, the court denies the County's motion for joinder, although the court notes that the State may intervene in this action if it so desires.

B. CROSS-MOTIONS FOR SUMMARY JUDGMENT

Plaintiffs filed this action to enforce the preclearance provisions of Section 5 of the Voting Rights Act of 1965, 79

Stat. 439, 42 U.S.C. § 1973c. Plaintiffs have moved for summary judgment, contending that the County is implementing Ordinances which require, and have not received, Section 5 preclearance. Section 5 provides in pertinent part that:

> Whenever a State or political subdivision .... shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968 .... such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color .... *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General ...

As a covered jurisdiction, County must comply with

Section 5 if it seeks to "administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968." All ordinances at issue herein have been enacted and adopted since 1968.

County has also moved for summary judgment, asserting that these ordinances simply concluded a consolidation process which began prior to the applicable date of coverage of Section 5 and that, therefore, "no change affecting voting" occurred and Section 5's preclearance requirements were not triggered. Alternatively, County asserts that its ordinances implicitly received the necessary preclearance through the preclearance of several state statutes. Each of these contentions is addressed separately below.

1. Change Affecting Voting

County contends, as noted above, that since the process of consolidation of the lower courts began prior to the County's applicable date of coverage, all subsequent steps taken to implement that process do not trigger the requirements of Section 5. However, a similar argument was considered and rejected by the United States Supreme Court in City of Lockhart v. United States, 103 S.Ct. 998, 1002-1003, 460 U.S. 125, 131-132 (1983). In Lockhart, the City contended that Section 5 did not apply to its "continuation" of two of its council seats and the continued use of numbered posts. The Court rejected the City's argument and concluded that there had been a change with respect to all of the council seats and to the use of numbered places.

Similarly, the court finds that the County ordinances disputed herein constitute a change in voting procedure different from that in force or effect on November 1, 1968. On that date, there were ten judicial election districts. Today, as a result of the adoption and implementation of the ordinances, there is one judicial election district. Accordingly, the court concludes that the ordinances were subject to the requirements of Section 5.

2. Implicit Clearance

County next contends that, even assuming its ordinances were covered by Section 5, Section 5's requirements were satisfied by the preclearance or relevant state statutes which operated to implicitly preclear the county ordinances. Specifically, County contends that the Attorney General's approval of Senate Bill 676 (State Statute 1249) operated as an implicit clearance of all predecessor, unsubmitted legislation that was merged into Senate Bill 676. County relies upon the holding in Woods v. Hamilton, 473 F.Supp. 641 (D.C.S.C. 1979), to support its contention.

In Woods, plaintiffs challenged the County's enforcement of local ordinances which had been adopted to implement a state statute which had received the necessary Section 5 preclearance. The statewide legislation, the South Carolina 1975 Home Rule Act, was submitted to and approved by the Attorney General. It was undisputed that the County had previously precleared a form of Home Rule in June of 1969. The 1975 Home Rule Act, as applied to the County, continued without change the exact form of government that had been previously precleared. However, the 1975 Home Act gave the County Council a new name and increased its powers at the expense of the county legislative delegation.

In its request for Section 5 preclearance of the 1975 Home Rule Act, it was apparent, and the court so found, that the state had submitted the entire Home Rule Act to the Attorney General for consideration. The Charleston County Attorney, pursuant to instructions from the State Attorney General, submitted the Home Rule Ordinances to the Attorney General of the United States for preclearance. No objections were made by the U.S. Attorney General within the proscribed sixty (60) day period. Accordingly, the Home Rule Ordinances were "cleared" under § 5 of the Voting Rights Act.

In this action, however, it is undisputed that the County ordinances were not submitted to the Attorney General. In

addition, 28 C.F.R. § 51.15 specifically requires that implementation ordinances be submitted for § 5 preclearance. Section 51.15 provides, in pertinent part:

> (a) With respect to legislation (1) that enables or permits the State or its political subunits to institute a voting change or (2) that requires or enables the State or its political subunits to institute a voting change upon some future event or if they satisfy certain criteria, the failure of the Attorney General to interpose an objection does not exempt from the preclearance requirement the implementation of the particular voting change that is enabled, permitted, or required, unless that implementation is explicitly included and described in the submission of such parent legislation.

Accordingly, County was required to submit the ordinances herein to the Attorney General for preclearance, unless the implementation was explicitly included and described in the submission of the parent, state legislation.

County correctly points out that § 51.15 was not in effect when the state statutes were precleared, between 1976 and 1986. However, County ignores the fact that § 51.14 was in effect, at least as of 1981. Section 51.14 contained the same provisions as are now contained in Section 51.15. Senate Bill 676 (State Statute 1249) was approved in 1983. Therefore, to receive preclearance, the County Ordinances must have been included and described in Statute 1249. Accordingly, the court reviews the language contained in State Statute 1249.

(a) State Statute 1249

Senate Bill No. 676, Chapter 1249, approved by the Governor in September of 1983, amended Government Code

Section 73562[1] to read as follows:

> There shall be seven judges of the Monterey County Municipal Court District; provided, that at such time as the Central and Southern Justice Court Districts are consolidated with the Monterey County Municipal Court District, there shall be nine judges of the Monterey County Municipal Court District.[2]

Chapter 1249, then, clearly mentioned the possible consolidation of the Central and Southern Justice Courts into the Monterey County Municipal Court District. The consolidation referenced in Chapter 1249 was accomplished by Local County Ordinance No. 2930. Therefore, County takes the position that the Attorney General's clearance of State Statute 1249 operated to preclear all prior County Ordinances which had consolidated the judicial districts. In support of its position, County relies upon certain dicta in the McCain v. Lybrand, 104 S.Ct. 1037 (1984) case which implies that, under certain circumstances, preclearance by implication may be appropriate. However, as

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[1] Senate Bill 676, Chapter 1249 also amended additional Government Sections. However, those sections are not relevant to the discussion herein.

[2] Government Code Section 73562 was subsequently amended in 1985 and 1987 to change the number of judges form seven to nine and ten, respectively. Senate Bill No. 1245, Chapter 659, at issue herein, specifically amended Government Code Section 73562 to change the number of judges from seven to nine after the consolidation of the judicial districts had been accomplished by Ordinance 2930. County has stated that Chapter 659 has received the requisite § 5 preclearance. The 1987 amendment to Government Section 73562, changing the number of judges from nine to ten, has not been presented to this panel and, presumably, is not at issue herein.

recently noted by the United States Supreme Court,

> McCain establishes a presumption that the Attorney General will review only the current changes in election practices effected by the submitted legislation, not prior unprecleared changes reenacted in the amended legislation. A submission's description of the change from one number of judges to another in a particular judicial district does not, by itself, constitute a submission to the Attorney General of the prior voting changes incorporated in the newly amended statute. Clark v. Roemer, 111 S.Ct. 2096, 2104 (1991).

County's attempt to distinguish, both factually and legally, the holdings in McCain and Clark is unavailing. Contrary to County's contention, the precleared state "enabling" legislation at issue herein is not "companion and substantively identical" to the unsubmitted local implementation legislation. In fact, of the four precleared state statutes, only two even mention consolidation of judicial districts, namely, statutes 1242 and 1249. Both statutes mention consolidation, but neither statute explicitly or implicitly provides for such consolidation.

Even assuming that the Attorney General's clearance of State Statute 1249 operated to implicitly preclear County Ordinance 2930 to which the statute referred, the parties agreed during the oral argument in this matter that all six (6) ordinances should be submitted for preclearance if all ordinances were not precleared. The court finds that the Attorney General's preclearance of State Statute 1249 did not operate to implicitly clear all related, unsubmitted County legislation.

V. CONCLUSION

Based upon the foregoing, it is the finding of this court that Monterey County is a jurisdiction subject to Section 5 preclearance provisions of the Voting Rights Act, 42 U.S.C. § 1973c and that, as such jurisdiction, Monterey County must

submit for preclearance any ordinances which constitute an "election change". The court further finds that the Monterey County Ordinances at issue herein, namely, Ordinances Nos. 1852, 1917, 1999, 2139, 2524 and 2930[3], constitute election changes subject to Section 5 preclearance and that, further, the ordinances have not been precleared pursuant to Section 5. Therefore, they cannot be implemented by County until such clearance is received.

Accordingly, the court hereby grants an order for partial summary judgment in favor of plaintiffs and denies defendant's motion to dismiss or for joinder or for summary judgment. The court summarily adjudicates that the ordinances cannot be implemented without preclearance pursuant to Section 5. The parties agreed at the hearing that if the court ruled that preclearance was required, the County would submit the ordinances to the Attorney General for preclearance. The court expects the County to do so within ninety (90) days of the date of this order. The parties are ordered to appear at a further status conference in this matter on Friday, September 3, 1993 at 10:30 a.m. in Courtroom No. 1 of the United States District Court in San Jose to update the court with respect to the status of the preclearance process.

DATED: March 31, 1993

/s/
RONALD M. WHYTE
United States District Judge

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[3] Even assuming Ordinance 2930 was implicitly cleared, it was agreed at oral argument that all ordinances would be submitted for preclearance.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA, Defendant. STATE OF CALIFORNIA, Intervenor.	NO. C-91-20559-RMW (EAI) (Voting Rights Action/Three Judge Court) OBJECTION OF THE STATE OF CALIFORNIA TO STIPULATION AND PROPOSED ORDER

Plaintiffs and Defendant County of Monterey have submitted a stipulation and proposed plan for conducting elections for the Monterey County Municipal Court in 1994 consistent with the Voting Rights Act, 42 U.S.C. § 1973c. That plan does not, as might have been expected, create multiple municipal court judicial districts configured so as to safeguard minority voting rights. Instead, the County proposes to retain

a single municipal court judicial district but provide for the election of judges to the court from geographical areas smaller than the whole of the judicial district.

Such a plan conflicts with California's Constitution, laws, and long-standing policy. Moreover, it jeopardizes the orderly administration of justice not only in Monterey County but throughout the State. For these reasons, the State respectfully submits this Objection.

I

THE COURT SHOULD NOT, BASED SOLELY ON THE AGREEMENT OF THE PARTIES, IMPOSE A PLAN FOR ELECTION OF MUNICIPAL COURT JUDGES, WHICH ALTERS THE LONG-STANDING STATE PRACTICE OF BALANCING ACCOUNTABILITY AND THE EXERCISE OF POWER

The California Constitution specifies that each county shall be divided into municipal court and justice court districts (Cal. Const., art. VI, § 5(a).) The Constitution specifies further that judges of the municipal and justice court "shall be elected in their . . . districts at general elections." (Cal. Const., art. VI, § 16(b).)

California's municipal and justice courts are intended to be responsive to the ordinary affairs of the citizens of the district. Generally speaking, these courts have jurisdiction over personal and commercial litigation involving less than $ 25,000. (Cal. Code Civ. Proc., § 86)[1] Thus, small claims matters (Cal. Code Civ. Proc., § 116 210) and residential landlord-tenant disputes (Cal. Code Civ. Proc., § 86(5)) are adjudicated in the municipal and justice courts. Municipal and justice courts have exclusive jurisdiction over violations of city ordinances -- e.g.,

[1] California's superior courts have jurisdiction over all causes save those given by statute to other trial courts. (Cal. Const., art. VI, § 10.)

zoning ordinances, commercial sign ordinances, parking ordinances, noise abatement ordinances, no-smoking ordinances. (Cal. Pen. Code, § 1462(a).) They also have jurisdiction over misdemeanors occurring in the county and over violations of traffic laws and ordinances. (*Id.*) Under California law, the people whose ordinary affairs are subject to the jurisdiction of the municipal court are the very people who elect the court's judges.[2]

Since its inception, California has provided for the election of its judges, the electoral basis for the judge being the geographical area encompassing those persons and that property which would generally be subject to a judgment of the court. California's 1849 Constitution required the Legislature to divide the state into several judicial districts, with a district court in each, and the Constitution provided that district judges were to be elected "by the qualified electors of their respective districts." (Cal. Const., art. VI, § 5 (1849).) This same Constitution also provided that, "[t]here shall be elected in each of the organized counties of this State, one County Justice." (Cal. Const., art. VI, § 8 (1849).)[3]

Following the 1879 Constitutional Convention, the state's new Constitution provided for a superior court in each county, "for each of which at least one judge shall be elected by the qualified electors of the county." (Cal. Const., art. VI, § 6 (1879).) The new Constitution also provided that the

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[2] With limited exceptions, civil actions against persons must be brought in the judicial district wherein the defendant resides. (Cal. Code Civ. Proc., § 395.) Similarly, actions *in rem* are brought in the judicial district wherein the property is located. (Cal. Code Civ. Proc., § 392.)

[3] As amended in 1862, the Constitution specified that the County Judge, "shall be elected by the qualified electors of the county." (Cal. Const., art. VI, § 7 (1862).)

Legislature, "shall determine the number of Justices of the Peace to be elected in townships, incorporated cities and towns, or cities and counties." (Cal. Const., art. VI, § 11 (1879).) The jurisdiction of justices of the peace was limited to the city or township from which they were elected.[4]

By 1893, county boards of supervisors were expressly

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[4] Although, the general rule was that township justice courts had jurisdiction co-extensively only with the township within which they were elected (*see* Cal. Stats. 1850, ch. 73, p. 179, § 2), an exception was made for the City and County of San Francisco. In 1857, the Legislature authorized a unique, hybrid creation of six justice's courts in the City and County of San Francisco, for which the board of supervisors was to divide the city and county into six townships. Each justice was to be elected by the electors of the respective township. The Legislature provided: "The justices of the peace so elected shall have jurisdiction co-extensive with the city and county, but shall hold their courts within the townships for which they were chosen respectively." (Cal. Stats. 1857, ch. 190, p. 210, § 2.)

The scheme was replaced less than 10 years later, in 1866, by creation of a single five-member justice's court for the City and County of San Francisco, with each judge elected at large. (See *Kahn v. Sutro, supra*, 114 Cal. 316, 332.) Thereafter, the jurisdiction of justice's courts was specified to be co-extensive with the city, city and county, or township, respectfully, from which the judge was elected. (*See* Cal. Code Civ. Proc., §§ 114, 116 (1872); Amend. Code Civ. Proc. 1880, § 106, 3 Hittel, *Codes and Statutes* (Supp. 1880) §§ 94, 106.)

Beginning in 1933, municipal and justice courts were given statewide jurisdiction over specified causes (*see* Cal. Code Civ. Proc., § 84), although proper venue remains in the relevant municipal and justice court where venue for civil actions is based on the residence of the defendant or the location of the property. (*See* Code Civ. Proc., §§ 392, 395.)

invested with power to divide their counties into townships for the purpose of electing justices of the peace. (Stats. 1893, p. 351, § 25; *see also*, States 1947, ch. 424, § 1, p. 1176.) Where the justice of the peace presided over a city justice's court, the electoral base was the city; where the justice of the peace presided over a township justice's court, the electoral base was the township. (*See Kahn v. Sutro*, 114 Cal. 316, 332 (1896) [Legislature has not provided for a system of town governments; purpose of division of city into townships is solely to provide for election of justices of the peace]; *see also, In re Romero*, 207 Cal. 341, 345 (1929) ["The city justice's court is an office of the city, and the justice thereof is elected by the electors of said city. The township justice's court is a township office and the incumbent of said office is elected by the electors of said township."].)

In 1949, county boards of supervisors were authorized to "divide the county into *judicial districts* for the purpose of electing judges and other officers of the municipal court and justice courts." (Stats. 1949, ch. 1511, p. 2694, § 1 (emphasis added).) This power is now found in California Government Code section 71040.

Thus, since 1850, California policy has been to subject trial court judges to election by all those over whom, and over whose property, the court would generally extend its jurisdiction, i.e., those persons who would generally be summoned before the court as defendants in civil actions (*see* Cal. Code Civ. Proc., § 393) and whose property could be the subject to proceedings for divestiture by the courts (*see* Cal. Code Civ. Proc., § 392). As noted *ante*, these would be the same electors who would have an interest in the manner in which the judge they elect administers justice respecting the violation of non-felonious criminal laws in that jurisdiction.

The parties to the instant proceeding propose to substitute for the present uniform system for electing municipal and justice court judges a system for Monterey County that

would dissociate a judge's jurisdictional base from his or her electoral base. Under the proposed plan, for example, enforcement of a city's ordinances could be subject to the jurisdiction of judges who are in no way accountable to the citizens of the city whose ordinance is at issue.[5]

Indeed, the scheme proposed by the parties would eliminate the system of elected municipal court judges for all electors in the municipal court district *except* for those electors in the smaller electoral area from which the judge was elected. As to *all others* within the municipal court district, the judge is tantamount to an *appointed* judge. Furthermore, those electors for whom the judge is selected by others have no recourse whatsoever against the "appointing power," viz., the electors of the smaller "election area."

The issue is not whether defendants have a right to trial by a judge whom they had an opportunity to elect. Defendants in one jurisdiction not uncommonly find themselves subject to the trial jurisdiction of an assigned judge elected from another jurisdiction.

Rather, the issue is whether judges should be elected according to a system that holds them answerable to only a few of those over whom the judge would exercise considerable power. Such a system invites corruption and "ward politics" (*see League of United Latin Amer. Citizens v. Clements*, 999 F.2d 831, 869, 871-873 (5th Cir. 1993), *pet. cert. filed* 10/23/93 (hereafter, *LULAC*)), inasmuch as a candidate for the bench need only satisfy a fraction of the comparatively few voters of his or her "election area" in order to secure a seat having district-wide jurisdiction. Even if *every voter in the remainder*

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[5] Under present law, no city may be divided by the creation of a municipal court district. (Cal. Gov. Code, § 71040.) This ensures that a municipal court judge must stand election before *all* of the voters of every city within the judicial district.

of the district sought the judge's ouster, they would be powerless to effect that result against the vote of the few in the judges "election area."

The scheme proposed by the parties brings with it the potential for confusion and multiple litigation challenging the capacity of "election area" judges to exercise the judicial power of the State. California law requires that municipal court judges be elected in the whole of their *judicial districts* (Cal. Const., art. VI, § 16(b); Cal. Gov. Code, § 71040.) Even were this Court to order implementation of an election plan based on "election areas" rather than the judicial district, the Court has no power to make the judges so elected qualified to exercise judicial power under the laws of this State.

The office of municipal court judge is one conferred by district election. (*See People v. Crespi*, 115 Cal. 50, 54 (1896) [distinguishing the office of magistrates which is conferred by statute].) Accordingly, imposition of the plan proposed by the parties would cloud civil judgments and criminal convictions rendered by these "election area" judges. Questions necessarily arise, for example, whether election of by "election area" only fills a vacancy in office such as to preclude appointment by the Governor (Cal. Const., art. VI, § 16(c)); whether "election area" judges may exercise the powers of municipal court judges (*see Koski v. James*, 47 Cal.App.3d 349, 355 [rejecting challenge to jurisdiction of justice court judge, sitting as a magistrate, on the ground that magistrates do not derive their office by election of the district voters, but by statute]); whether such "election area" judges are entitled to compensation or retirement benefits under state law (*see* Cal. Gov. Code, § 75000 *et seq.*); and whether the Chief Justice of the Supreme Court may assign such judges to other courts (*see* (Cal. Const., art. VI, § 15["A judge eligible for municipal court service may be assigned by the Chief Justice to serve on any court"]; *see also* Cal. Gov. Code, § 68540.5 [liability of county to whom judge is assigned for the salary of the assigned judge]).

California has a compelling interest in the qualifications of its judge (see *Gregory v. Ashcroft*, _ U.S. _, 111 S.Ct. 2395, 2407; *LULAC*, supra, 999 F.2d at 872.) It is the ideal of the California Constitution that the suitability of an individual to be a trial court judge in California should determined by a representative cross-section of the electorate whom the judge would serve. (*See* e.g., J. Ross Browne, *Report of the Debates in the Convention of California* (1850), p. 230 (Remarks of Mr. Ord from Monterey) ["I think that the people of the district will take care that they elect men who will not be swayed by rich men."].) Should this Court find it necessary to impose a municipal court election plan in order to permit the conduct of judicial elections in 1994 in conformity with Section 5 of the federal Voting Rights Act, any such plan should preserve the contiguity of the electoral base of the Monterey County Municipal Court judges and the jurisdictional base of the municipal court district or districts, unless it is determined that dissociation of such contiguity is necessary to ensure compliance with Section 2 of the Voting Rights Act.

II

DEFENDANT MONTEREY COUNTY IS WITHOUT POWER TO STIPULATE TO A SUSPENSION OF THE CALIFORNIA CONSTITUTION

Monterey County is a legal subdivision of the State of California (Cal. Gov. Code, §§ 23002, 23012), purporting to enter into the stipulation and proposed order pursuant to powers enjoyed as a matter of state law. As a matter of state law, counties have only such authority as has been conferred on them by the State Constitution or the Legislature; "they possess and can exercise only those powers that have been so expressly conferred, that are necessarily implied therefrom, or that are indispensable (and not simply convenient) to their operational existence." (*Richter v. Board of Supervisors*, 259 Cal.App.2d 99, 105 (1968); *see* 68 Ops.Cal.Atty.Gen. 175, 177-178 (1985),

and cases cited therein; see also Cal. Gov. Code § 23033.) Furthermore, whatever powers have not been expressly conferred upon counties, or which are not necessary to the execution of an expressed power, are withheld from them to exercise. (*See* 68 Ops.Cal.Atty.Gen., *supra*, at 178.)

The Legislature has not invested counties with the power to tender the State Constitution's provisions for federal court "suspension" for the county's convenience. Nor can it reasonably be argued that such a power is reasonably necessary to the execution of any expressed power. The County may not use this Court's equitable powers to accomplish impermissible ends. "Consent is not enough when litigants seek to grant themselves powers they do not hold outside of court." (*LULAC*, *supra*, 999 F.2d at 846.)

CONCLUSION

For the reasons stated herein, the Court should reject the stipulation and proposed election plan.

DATED: December 6, 1993 Respectfully submitted,

DANIEL E. LUNGREN	LINDA CABATIC	/s/
Attorney General of the State of California	Supervising Deputy Attorney General	MANUEL M. MEDEIROS Deputy Attorney General

Attorneys for Intervenor State of California

(Declaration of Service Omitted in Printing)

Filed
DEC 22, 1993
Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA, Defendant.	NO. C-91-20559-RMW (EAI) ORDERS RE: (1) MOTIONS TO INTERVENE; (2) APPLICATION FOR APPROVAL OF STIPULA-TION; (3) SCHEDULING OF STATUS CONFERENCE; AND (4) STAYING DATE FORMS FOR PETITIONS MUST BE AVAILABLE

PANEL: Circuit Judge Mary M. Schroeder and District Judges James Ware and

Ronald M. Whyte

The motion of the State to intervene is granted.

The court declines to grant the application of plaintiffs and defendant Monterey County for a court order approving their stipulated election area plan for the election of municipal judges, absent a clear showing that such a plan is necessary to comply with § 5 of the Voting Rights Act. The proposed plan appears to conflict with Article VI, § 16 (b) of the California Constitution, and the panel is not satisfied that a plan necessarily has to conflict with Article VI, § 16(b) in order to meet the requirements of the Voting Rights Act.

The parties are to appear for a Status Conference on January 14, 1994 at 10:30 a.m. before Judge Whyte to discuss further proceedings in this matter. If, however, the parties make application by January 12, 1994 for approval of a plan that would create municipal court districts configured so as to safeguard minority rights, the court will consider resetting the Status Conference for a later date in order to allow review of the newly submitted plan.

The court hereby stays until January 18, 1994 the date by which forms must be made available to municipal judicial candidates for the securing of signatures for petitions in lieu of filing fees. See: California Elections Code § 6555(b). Such a stay is to allow time for the submission, review, and approval of an election plan that complies with § 5 of the Voting Rights Act without unreasonably interfering with the ability to hold an election in June of 1994.

DATED: 12/22/93

/s/
RONALD M. WHYTE
United States District Judge
On Behalf of the Panel

Filed
JAN 21, 1994
Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA, Defendant.	NO. C-91-20559-RMW (EAI) ORDER RE: 1. MOTIONS BY JUDGE FIELDS TO INTERVENE; 2. SETTING BRIEFING SCHEDULE ON SECOND STIPULATION AND ORDER; 3. ABBREVIA-VIATING ELECTION FILING DEADLINES

PANEL: Circuit Judge Mary M. Schroeder and District Judges James Ware and Ronald M. Whyte

On December 21, 1993 Michael S. Fields, Judge of the Municipal Court of the County of Monterey, moved for an order granting him leave to intervene in these proceedings for the limited purpose of objecting to the parties' proposed stipulation

and court order.[1] The motion to intervene is denied without prejudice.

> A voting rights case challenges the election process rather than the individuals holding office. As government officials, . . . (judges) have no legally protectable interest in redistricting. Because it is a legislative action, judges play no part in creating or revising the election scheme and, therefore fail to meet the "real party in interest" test.

League of United Latin Amer. Citizens v. Clements, 884 F.2d 185, 188-189.

Judge Fields, therefore, has no right to intervene in his "official capacity". However, this order is without prejudice to a showing by Judge Fields that he has a "personal interest" which needs protection or that he meets the standard for permissive intervention. See generally: Clements, supra at 188-189 (discussion re personal interest and permissive intervention).

On January 13, 1994 the County and plaintiffs submitted a new stipulation and proposed order ("Parties' Second Stipulation and Order") in response to the court's order of December 22, 1993 declining to grant their application for approval of their original "Parties' Stipulation and Court Order." A status conference was held on January 14, 1994 and the parties agreed upon, and the court hereby orders, the following briefing schedule with respect to the new submittal:

January 18, 1994: Additional points and authorities supporting the new proposal due;

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[1] Judge Fields' motion was actually filed in connection with the stipulation and order lodged with the court on November 22, 1993. However, Judge Fields' interest in intervening continues and he wishes to be heard with respect to the parties' newly submitted "Second Stipulation and Court Order".

January 28, 1994: Responses to proposal due; and

February 4, 1994: Reply by plaintiff and County due.

At the status conference no party object to the abbreviated filing deadlines proposed by the County and plaintiffs for the anticipated June 7, 1994 municipal court election. The court hereby stays the otherwise applicable dates and adopts the proposed abbreviated schedule. Such action is necessary to allow time for the review and approval of an election plan that complies with § 5 of the Voting Rights Act without unreasonably interfering with the ability to hold an election in June of 1994. The abbreviated schedule ordered is as follows:

Abbreviated Filing Deadlines
for
Judge of the Municipal Court Election
June 7, 1993

DATE	ACTIVITY (ELECTIONS CODE)
FEB 28 TO MAR 21	SIGNATURE-IN-LIEU OF FILING FEE Period during which candidates may circulate petitions in-lieu of paying filing fee. (E.C. 6494.1, 6554, 6555)
MAR 28	SIGNATURE-IN-LIEU DEFICIENCIES Deadline for Registrar to notify candidates of deficiencies in signature-in-lieu petitions. (E.C. 6554, 6555(b)
FEB 28 TO MAR 4	DECLARATIONS OF INTENTION Period candidates shall pay the appropriate filing fee and file the declaration of intention to become a candidate for office. (E.C. 6554,

25301)

MAR 10 TO MAR 31 — NOMINATION PERIOD

Period during which candidates declare candidacy and circulate nomination petitions. (E.C. 6490, 6494, 6494.1, 6550, 6554, 6555)

MAR 31 — SUPPLEMENTAL SIGNATURE-IN-LIEU

Last day for candidates who filed signature-in-lieu petitions to submit supplemental petitions. (E.C. 6554, 6555b)

APR 1 TO APR 5 — EXTENSION OF NOMINATION PERIOD

Nomination period is extended for five days if an incumbent has failed to file a written and signed declaration of intention. (E.C. 25305, 25500b)

APR 6 — RANDOM ALPHABET DRAWING

Date on which Registrar of Voters would request Secretary of State to conduct a random alphabet drawing to determine order of candidates' names on the ballot. (E.C. 10217, 10217.5)

APR 11 — JUDICIAL INCUMBENT (UNOPPOSED) WRITE-IN PETITION

Last day to file a petition (100 qualified signatures required) indicating that a write-in campaign will be conducted in which only the incumbent has filed nomination papers. (E.C.

25304)

APR 21 MAY 24 — WRITE-IN CANDIDACY/NOMINATION PERIOD

During this period, all write-in candidates must file their statement of write-in candidacy. (E.C. 7300-7304)

DATED: 1/21/94

/s/
RONALD M. WHYTE
United States District Judge
On Behalf of the Panel

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA, Defendant. STATE OF CALIFORNIA, Intervenor.	NO. C-91-20559-RMW (EAI) (Voting Rights Action/ Three Judge Court) OBJECTION OF THE STATE OF CALIFORNIA TO SECOND STIPULATION AND PROPOSED ORDER

Pursuant to the order of this Court entered on January 14, 1994, the State of California respectfully submits these objections to the parties' second proposal on stipulation:

THE STATE OF CALIFORNIA OBJECTS TO THE ISSUANCE OF ANY ORDER FROM THIS COURT THAT WOULD RESULT IN THE CREATION OF MUNICIPAL COURT ELECTION DISTRICTS IN CONTRAVENTION OF STATE LAW, ABSENT A SUFFICIENT SHOWING THAT SUCH CONTRAVENTION IS NECESSARY IN ORDER TO ENSURE COMPLIANCE WITH PARAMOUNT FEDERAL LAW

With minor exceptions, the parties's second stipulation is substantively indistinguishable from their initial stipulation. In several respects, the parties seek the Court's assistance in accomplishing what would be prohibited under the California Constitution or under other state law. In only one case, have the parties made any effort to adduce facts to justify departure from state law.

A. The State Objects To The Proposal's Failure To Unify The Judges' Electoral Base And Their Jurisdictional Base

In their first stipulation, the parties proposed retention of the single municipal court judicial district with creation of seven "election areas" therein. According to the first stipulation:

> "1. . . . All municipal court judges, regardless of residency or election area, will serve the entire county and can be assigned to any judicial assignment or any court location. Assignments will be made without regard to residency or election area.
>
> 2. . . . These election areas shall be used solely for the purpose of electing municipal court judges. These election areas shall not be used for any other purpose, including but not limited to, assignment of cases or court locations."

(Parties' Stipulation, p. 7.) Under the original plan, three of the "election areas" would be two-judge election areas; four, would

be one-judge election areas.

The parties' second proposal purports to be modeled on San Bernardino County's statutorily created municipal court district. (Cal. Gov. Code, § 73100 *et seq.*) Instead of seven "election areas," the parties would create four "divisions" which would constitute the "district" for purposes of article VI, section 16(b) of the California Constitution. However, as in the earlier proposal:

> "1. . . . All municipal court judges, regardless of residency or division area, will serve the entire county and can be assigned to any judicial assignment or any court location. Assignments will be made without regard to residency or division area.
>
> 2. . . . These judicial divisions shall be used solely for the purpose of electing municipal court judges. These divisions shall not be used for any other purpose, including, but not limited to, the assignment of cases or court locations."

(Second Stipulation, p. 7.) Under this new plan, three of the divisions would be one-judge divisions; the fourth division would have seven judges.

Government Code section 73100 *et seq.* creates a single municipal court district for San Bernardino County with several "divisions" therein. Government Code section 73103 specifies that each "division" constitutes the "district" referred to in Cal. Const., art. VI, § 16(b), i.e., the "district" within which a municipal court judge must stand for election. (See also, Cal. Gov. Code, §§ 73394, 73581.)

The San Bernardino County scheme was challenged in 1989. The California Court of Appeal, in an unpublished opinion, reasoned that the only "constitutional" definition of a "district" is "an area designated in the manner prescribed by the Legislature with a population base of more than 40,000." (*Merriam v. Jacobsen*, 2 Civ. No. E006062 (Dec.

26, 1989) (hereafter, *Merriam*), p. 9.)[1] The Court of Appeal made these observations:

> [T]he reason for requiring election by district was to ensure that the municipal and justice courts would remain community courts. The San Bernardino scheme furthers this objective by allowing voters within each division to elect the judges who will sit in that division. That judges are *temporarily* assigned to other divisions does not diminish the local accountability intended by the requirement of election by district any more than temporary assignments which occur in other courts.[4]

(*Merriam* at p. 10 (emphasis added) and n. 4 ["We note that the rules which were adopted by the majority of the judges in all the divisions allow only for temporary assignment of judges between divisions. Similarly, the transfer of cases requires the consent of the supervising judges of both divisions and allows the presiding judge of the district to act only in the event of a dispute."])

The scheme was also challenged on the ground that it denied the right of suffrage, "in that [plaintiff] does not have the right to vote for those judges who will preside over cases in his division." Stated otherwise: "[T]he voters in the San Bernardino County Municipal Court District are denied equal protection because unlike voters in other districts, they are not entitled to vote for all the judges in the 'district'." (*Merriam* at p. 11.)

The appellate court rejected the contention because, in operation, each division is, in essence, a *de facto* municipal court district:

> The judges within each division are required to be residents within that division and upon

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1. A copy of the *Merriam* opinion is appended hereto for the Court's convenience.

election *are permanently assigned to that division*.

Furthermore, there has been no showing that the effectiveness of the franchise is diminished or diluted by the fact that the administrative functions for the de facto districts are handled on a uniform basis county-wide. While such might be a concern if judges were elected in one division yet assigned permanently to another, it is clear from the record that *transfers to other divisions occur only on a temporary basis to fill vacancies due to vacations or illnesses and there are no indications that such temporary assignments occur with any greater frequency or for longer durations than occur in other districts.* Accordingly, we do not find that the present scheme invades or infringes upon the right of suffrage.

(*Merriam* at p. 12 (emphasis added).)

In short, the Court of Appeal in *Merriam* was willing to sanction the San Bernardino County municipal court scheme only because each division was a *de facto* municipal court district, i.e., each division, in fact, encompassed a population of 40,000 at the time of creation, and judges would be permanently assigned to the division of their election. It seems clear that different facts would have led to a different result. (See *Bell v. Board of Supervisors*, 55 Cal.App.3d 629, 634-635 (1976) [legislation purporting to create municipal court electoral "divisions" with fewer than 40,000 residents was unconstitutional].)

Unlike the San Bernardino County scheme approved in *Merriam*, the plan proposed by the parties in this case does not provide any assurance that judges will be permanently assigned to the division within which they are

elected. Quite the contrary, as noted above, the proposed order specifically states:

> All municipal court judges, regardless of residency or division area, will serve the entire county and can be assigned to any judicial assignment or any court location. Assignments will be made without regard to residency or division area.

Thus, the new proposed plan makes no effort to preserve the relationship between electoral base and jurisdictional base which exists in the San Bernardino County scheme, as implemented in practice, and which the Court of Appeal in *Merriam* found sufficient to bring the "division" scheme into compliance with article VI, section 16(b).

The parties have made no factual showing whatsoever that compliance with federal law compels the separation of judicial electoral base and jurisdictional base.[2] In the absence of such a showing by the parties that is determined

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2. The County suggests that creation of separate municipal court districts would violate the Voting Rights Act by creating "separate but equal" judicial districts. (County's Memorandum in Support of Parties' Second Stipulation and Order, pp. 10-11.) Ironically, the County suggests that compliance with *Section 5* of the Voting Rights Act -- i.e., a return to the pre-1972 condition -- would violate *Section 2* of the Act.

The State is aware of no authority for the proposition that preserving a unity between electoral base and jurisdictional in judicial elections contravenes the letter or spirit of the Voting Rights Act. Indeed, there is substantial authority quite to the contrary. (See *League of United Latin Amer. Citizens v. Clements*, 999 F.2d 831, 869, 871-873 (5th Cir. 1993), *cert. den.* 62 U.S.L.W. 3471 (1994).)

by the Court to be sufficient, the proposal should be rejected.[3]

B. The State Objects To The Proposed Creation Of Judicial Election Districts Having Fewer Than 40,000 Residents

Merriam concluded that the San Bernardino County scheme satisfies section 5 of article VI, because each "division" met the 40,000+ population requirement for a municipal court district. (See Cal. Const., art. VI, § 5.) The plan proposed by the parties in this case is concededly deficient on this point. Plaintiffs admit that "[t]hree of the divisions under the Municipal Court Division Plan will each have less than 40,000 residents." (Plaintiffs' Memorandum in Support of Parties' Second Stipulation and Order (hereafter, Plaintiffs' Memorandum), pp. 3-4.) Again, no factual showing is made to justify departure from this minimum population requirement.

C. The State Objects To The Proposed Creation Of A Judicial Election District That Divides The City of Salinas, In The Absence Of

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3. The State does not view its position in this litigation to be adversary to that of the County. The State believes it to be the County's obligation, as a political subdivision of the State (Cal. Gov. Code, § 23002), to defend the Constitution as the supreme declaration of the people's will in this State.

Accordingly, the State would defer to the County's determination as to the measure and quality of the showing by Plaintiffs that should be accepted by the Court as sufficient to justify the proposed departure from state law. Alternatively, the State would be satisfied if the County simply stipulated to the existence of *facts* that should justify departure from state law. However, the State does contend that, whatever evidence is proffered as justification for departing from state law, the sufficiency of such evidence to justify departure from state law should be determined by the Court.

Agreement By The County That Plaintiffs' Factual Justification For The Departure From State Law Is Accurate And Sufficient

The plan proposed by the parties also divides the City of Salinas (Plaintiffs' Memorandum, p. 4), in contravention of article VI, section 5 of the Constitution.[4] A similar claim was raised in *Merriam* respecting division of the City of Highland; at the time of the appellate court decision, the city was located within two divisions of the municipal court district. The appellate court declined to resolve the issue for lack of sufficient evidence:

> [I]t is not clear whether this present situation, assuming it exists, is the result of the county's action in establishing divisions or the result of the City of Highland's action in incorporating. The sole evidence before the court was that at the time of their creation each division met the constitutional requirements for a district and thus it must be assumed that Highland's location within two divisions occurred after the division boundaries were established.

(*Merriam* at p. 15 n. 6.)

In this instance, Plaintiffs do proffer a Voting Rights Act justification for splitting the City of Salinas. (Plaintiffs' Memorandum, pp. 5-12.) However, there is no indication that the County agrees with Plaintiffs' contention. As the State has indicated (see note 3, *supra*), a stipulation by the County as to the accuracy and sufficiency of Plaintiffs' factual

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4. It is interesting to note Plaintiffs' contention that the County cannot return to the 1968 boundaries because those boundaries would split the Cities of Salinas, Marina, and Pacific Grove in violation of state law. (Plaintiffs' Memo, p. 4 n. 2.)

showing should be minimally required in order for the Court to determine whether sufficient justification exists for departing from state law.

D. The State Objects To The Parties' Proposal To Ignore Statutory Residency Requirements For Municipal Court Judges

Government Code section 71140 states that judges of the municipal court must be residents eligible to vote in the judicial district or city and county in which they are elected at least 54 days prior to the date of their election or appointment.[5] Even in the so-called San Bernardino County Plan, after which the parties' proposal is modeled, requires judges to reside in the division of their election. (*Merriam* at p. 12.)

The parties' plan expressly permits judges to reside anywhere in the county, without regard to the division in which they must stand for election. No Voting Rights Act justification is offered for departing from the otherwise applicable residency requirement imposed by state law on municipal court judges in Monterey County.[6]

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5. The Legislature has declared that residency in the county is sufficient for candidates to municipal courts in the Counties of Fresno, Humboldt, Stanislaus, San Mateo, Santa Clara, San Diego, Los Angeles and Orange. (Cal. Gov. Code, §§ 72240.2, 71140.3.)

6. It would appear that an incumbent's lack of residence in a division to which he might be assigned would not prevent the incumbent from automatically succeeding to the new office. (Cal. Gov. Code, § 71140.) However, in the absence of legislation, if an election in the new judicial election district is conducted in 1996 -- as would be required upon adoption of new election district scheme by the County (see Cal. Gov. Code, § 71080) -- then judges who would be required to stand for election in that cycle will have to decide whether to take up residency in the new division if they do not already have their residence there.

CONCLUSION

For the reasons discussed herein, the State urges the Court to reject the Second Stipulation in the absence of (i) either a factual showing by the Plaintiffs in justification for each proposed departure from state law, or a stipulation by the parties to facts in justification for each proposed departure from state law; and (ii) a determination by this Court that their is sufficient evidentiary support (whether by proof or stipulation) to justify departure from state law in order to ensure compliance with a paramount federal law.

DATED: January 26, 1994

Respectfully submitted,
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(Declaration of Service Omitted in Printing)

Filed
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Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA, Defendant.	NO. C-91-20559-RMW (EAI) ORDER SCHEDULING HEARING

PANEL: Circuit Judge Mary M. Schroeder and
District Judges James Ware and
Ronald M. Whyte

Counsel in the above-entitled action are hereby ordered to appear before the panel at the United States District Court, 280 South First Street, San Jose, California, Courtroom No. 1, 5th Floor, on February 25, 1994, at 2:30 p.m. for a hearing with respect to the second stipulation and proposed order. The court has questions concerning the issues which have been raised by the parties' briefs.

The panel has accepted and reviewed the amicus curiae brief filed on behalf of Governor Wilson. The Court also hereby grants Judge Fields's motion for limited intervention with

respect to his personal interest in the litigation.

DATED: February 23, 1994 /s/
RONALD M. WHYTE
United States District Judge
On Behalf of the Panel

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA Defendant.	NO. C91 20559 RMW (EAI) ORDER REQUIRING SUBMISSION OF ELECTION PLAN FOR PRECLEAR-ANCE; ALTERNATIVE ORDER TO SHOW CAUSE; ORDER ENJOINING ELECTION PENDING PRECLEAR-ANCE

BACKGROUND

In its order dated March 31, 1993, this court found that certain Monterey County municipal court judicial district consolidation ordinances, which were adopted between 1968 and 1983, required preclearance pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, and that such preclearance had not been obtained. As a result of this court's

order, Monterey County filed a declaratory judgment action pursuant to Section 5 in the United States District Court for the District of Columbia seeking judicial approval of these consolidation ordinances. Monterey County v. United States of America, Civil Action No. 931639 (CRR) (D.C.Dist. Colum. 1993). By an order filed on September 7, 1993, that court permitted the plaintiffs in this action to intervene. Monterey County, then, stipulated with plaintiffs that it would be unable to establish that these ordinances did not have the effect of denying the right to vote to Latinos in Monterey County due to the retrogressive effect several of these ordinances had on Latino voting strength in Monterey County. Pursuant to the parties' stipulation, the action in the District Court for the District of Columbia was dismissed.

Monterey County and plaintiffs then agreed to the implementation of an election system for the election of municipal court judges to the Monterey County Municipal Court District and requested this court to order the County to adopt the system before preclearance. However, by order dated December 22, 1993 this court declined the request without prejudice because the court was not satisfied that a plan necessarily had to conflict with the California Constitution in order to comply with the Voting Rights Act. On January 13, 1994 the County and plaintiffs submitted a new stipulation and proposed order in response to the court's order of December 22, 1993. The new plan, in an attempt to comply with Section 5, also appears to conflict with certain provisions of the California Constitution and certain state laws.

ROLE OF THREE-JUDGE COURT

The role of the three-judge court entertaining an action under Section 5 of the Voting Rights Act is limited. In City of Lockhart v. United States, 460 U.S. 125, 129 n. 3 (1983), the Court describes that role:

> [The three-judge court determines] (l) whether a change was covered by § 5, (ii) if the change was

> covered, whether § 5's approval requirements were satisfied, and (iii) if the requirements were not satisfied, what remedy was appropriate....

Since this court determined in its March 31, 1993 order that (1) the County's consolidation ordinances were covered by § 5 and (2) Section 5's approval requirements were not satisfied, the question at this point is what remedy is appropriate. The remedy Section 5 contemplates is injunctive relief. Brooks v. State Bd. of Elections, 775 F.Supp. 1470, 1482 (S.D.Ga. 1989). In Perkins v. Matthews, 400 U.S. 379, 385 (1971) the Court pointed out what this court cannot do:

> What is foreclosed to [the court] is what Congress expressly reserved for consideration by the District Court for the District of Columbia or the Attorney-General - the determination whether a covered change does or does not have the purpose or effect 'of denying or abridging the right to vote on account of race or color.'

The three-judge court has some limited discretion in fashioning the "appropriate remedy" to ensure that § 5's approval requirements are met. See e.g. Perkins v. Matthews, 400 U.S. 379, 396 (1971). In N.A.A.C.P. v. Hampton County Election Commission, 470 U.S. 166, 179 (1985) and Berry v. Doles, 438 U.S. 190, 192 (1978), the Supreme Court directed that appropriate relief under Section 5 should include an order allowing 30 days for the state to submit covered changes to the Attorney General for approval. In Berry v. Dole, the Court found that the District Court committed reversible error by not ordering the Peach County officials to seek preclearance of the voting change. Berry v. Dole, 438 U.S. 187, 193 (1978). Once the state has "successfully complied with the Section 5 approval requirements, private parties may enjoin the enforcement of the new enactment only in suits attacking its constitutionality; there is no further remedy provided by § 5." Allen v. State Board of Elections, 393 U.S. 544, 549-50 (1968).

CURRENT ISSUE BEFORE COURT

In the instant case, the parties acknowledge that any newly proposed election plan must be submitted for preclearance to the Attorney General or the United States District Court for the District of Columbia. The plaintiffs and County submit that this court should at this time order adoption of their newly proposed plan before it is submitted for preclearance, because suspension of certain California constitutional provisions and statutes may be necessary in order for the plan to meet the requirements of the Voting Rights Act. The State and Judge Fields object to the court's ordering adoption at this point, as they claim that an insufficient showing has been made that a plan cannot be fashioned without conflicting with state requirements.

FINDING BY COURT

The court is not satisfied based upon the showing made to date that a new election plan for the election of Municipal Court judges must conflict with the California Constitution or any California statute in order to comply with the Voting Rights Act. Therefore, it makes the order set forth below.

ORDER

Good cause appearing, the County of Monterey is hereby ordered to submit forthwith to the Attorney General or the United States District Court for the District of Columbia a new election plan for preclearance that complies with the Voting Rights Act and does not violate the state constitution or any law of the State of California. If the County is unable to submit a new election plan that complies with the Voting Rights Act without violating a provision of the California Constitution or a law of the State of California, it shall show cause on March 31, 1994 at 1:30 p.m. in this court as to why it cannot do so. The showing should identify the specific constitutional provision with which it cannot comply and the factual basis for its conclusion that it cannot comply. The factual basis should be supported by affidavit, stipulation of the parties, or other admissible evidence.

This factual showing should be filed and served on all

parties at least 15 days before the hearing on the order to show cause and each party should file at least 5 days before the hearing any objections it has to the County's factual showing and state any issue on which it believes an evidentiary hearing is required. The court will then decide at the hearing on March 31, 1994 whether an evidentiary hearing will be necessary and, if not, whether the County should be ordered to adopt a plan that conflicts with state law in order to have a plan that it can submit for Section 5 preclearance to the Attorney General or the United States District Court for the District of Columbia.

The County is hereby enjoined pending preclearance of a new election plan or further order of this court from holding an election for judges for the municipal court.

DATED: 2/28/94 /s/
RONALD M. WHYTE
UNITED STATES DISTRICT JUDGE
ON BEHALF OF THE PANEL

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, *et al.*

Plaintiffs,

v.

MONTEREY COUNTY,
Defendants.

STATE OF CALIFORNIA,
Intervenor.

NO. C-91-20559 RMW (EAI)

RESPONSE OF STATE OF CALIFORNIA TO STIPULATIONS OF PLAINTIFFS AND MONTEREY COUNTY FOR HEARING ON ORDER TO SHOW CAUSE

Date: March 31, 1994
Time: 1:30 p.m.
Courtroom: Circuit Judge Mary M. Schroeder, District Judges James Ware and Ronald M. Whyte

Intervenor State of California respectfully submits this response to the Stipulations entered into by the Plaintiffs and the County of Monterey for purposes of showing cause on March 31, 1994, as previously ordered by this Court.

1. The State will not object to the County's stipulation to the truth of the facts stated in respect to paragraphs 1, 3 through 9, inclusive, and 11 through 15, inclusive. Nothing herein should be construed, however, to reflect agreement by the State's concurrence in the County's stipulation.

2. With respect to paragraph 2 of the stipulation, the State would refer the Court to arguments in earlier submissions respecting the issue whether Section 5 of the Voting Rights Act compels the conduct of an election within 10 months of the creation of any new judicial election area, in contravention of section 71080(a) of the California Government Code. None of the stipulated facts address appear to address this issue.

3. With respect to paragraph 10 of the stipulation, the State would point out that this issue -- insofar as it relates to elections of trial court judges that each exercise the whole of the judicial power within the district of their election -- is not settled, has not been briefed, and is, indeed, before the district court in *Trujillo v. State of California*, N.D.Cal. No. C-92-20465 (RMW). Should the Court accept this stipulation of a contested issue of law, the State wishes to make clear that it does not join in the County's stipulation.

Finally, the State observes that there has been no stipulation or submission of facts which would justify departure from the following state law requirements: (1) Candidates for municipal court must reside in the district of their election; (2) municipal court judges, like superior court judges, must stand election before all of the voters of the district over which they will preside as judges.

DATED: March 24, 1994 Respectfully submitted,

DANIEL E. LUNGREN
Attorney General of the
State of California
LINDA CABATIC
Supervising Deputy
Attorney General

/s/
MANUEL M. MEDEIROS
Deputy Attorney General

Attorneys for Intervenor State of California
(Declaration of Service Omitted in Printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA, Defendant.	NO. C 91 20559 RMW (EAI) TENTATIVE ORDER REQUIRING COUNTY TO HOLD NOVEMBER ELECTIONS PURSUANTTO AN INTERIM PLAN; AND RE MOTION TO VACATE OR SHORTEN TERMS

BACKGROUND

In its order dated March 31, 1993, this court found that certain Monterey County municipal court judicial district consolidation ordinances, which were adopted between 1968 and 1983, required preclearance pursuant to Section 5 of the

*(Please note that year is incorrect. The year should be 1994.)

Voting Rights Act, 42 U.S.C. § 1973 c, and that such preclearance had not been obtained. As a result of this court's order, Monterey County filed a declaratory judgment action pursuant to Section 5 in the United States District Court for the District of Columbia seeking judicial approval of these consolidation ordinances. Monterey County v. United States of America, Civil Action No. 93-1639 (CRR) (D.C.Dist. Colum. 1993). By an order filed on September 7, 1993, that court permitted the plaintiffs in this action to intervene. Monterey County, then, stipulated with plaintiffs that it would be unable to establish that these ordinances did not have the effect of denying the right to vote to Latinos in Monterey County due to the retrogressive effect several of these ordinances had on Latino voting strength in Monterey County. Pursuant to the parties' stipulation, the action in the District Court for the District of Columbia was dismissed.

Monterey County and plaintiffs then agreed to the implementation of an election system for the election of municipal court judges to the Monterey County Municipal Court District and requested this court to order the County of Monterey to adopt the system before preclearance. However, by order dated December 22, 1993 this court declined the request without prejudice because the court was not satisfied that a plan necessarily had to conflict with the California Constitution in order to comply with the Voting Rights Act. On January 13, 1994 the County of Monterey and plaintiffs submitted a new stipulation and proposed order in response to the court's order of December 22, 1993. The new plan also conflicted with certain provisions of the California Constitution and certain state laws.

On March 1, 1994, this court ordered the County of Monterey to submit to the Attorney General or the United States District Court for the District of Columbia a new election plan for preclearance that complied with the Voting Rights Act and did not violate the state constitution or any law of the State of

California. The court further ordered that if Monterey County were unable to submit a new election plan that complied with the Voting Rights Act without violating a provision of the California Constitution or a law of the State of California, it should show cause why it could not do so.

On March 16, Monterey County and plaintiffs submitted stipulations that included a list of 10 proposals and a citation to the state law violated by each respective plan. Stipulation .15 states that "[t]he Board of Supervisors is unable to devise or prepare any plan for the election of municipal court judges in Monterey County that does not conflict with at least one state law and still comply with the Voting Rights Act."

ANALYSIS

Redistricting and reapportionment are " 'primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court.' " Voinovich v. Quilter, __ U.S. __, 113 S.Ct. 1149, 1157 (1993) (citation omitted). As the Court stated in Wise v. Lipscomb, 437 U.S. 535, 540 (1978):

> Legislative bodies should not leave their reapportionment tasks to the federal courts; but when those with legislative responsibilities do not respond, or the imminence of a state election makes it impractical for them to do so, it becomes the 'unwelcome obligation,' Connor v. Finch, supra, 431 U.S. at [407], 415, 97 S.Ct. at [1828], 1833 [1977], of the federal court to devise and impose a reapportionment plan pending later legislative action.

The three-judge court has some limited discretion in fashioning the "appropriate remedy" to ensure that Section 5's approval requirements are met. See e.g. Perkins v. Matthews, 400 U.S. 379, 396 (1971).

In the instant case, the County of Monterey has failed to devise and preclear a plan that conforms with both the Voting

Rights Act and with state law. Because the interests of the voters mandate holding elections in November, the court will enter an interim reapportionment order that will allow the elections to go forward pending legislative action. For the reasons set forth below, the court orders that municipal court elections be held in November for the Monterey County Municipal Court District which encompasses the entire County of Monterey and which has ten judges. Cal. Gov't Code §§ 73560 and 73562. The voting for each judicial office up for election will be County-wide. Cal. Const. art. VI, § 16(b). In other words for this interim plan there will be congruity of electoral and jurisdictional base as required by the California Constitution. The election will be for the offices of those judges whose terms expire on or before January of 1995. See Cal. Gov't. Code §§ 71141 and 71145. However, the terms of the judges elected pursuant to the interim plan will expire on the first Monday of January of 1996.

The court is cognizant of the fact that the interim plan fails to fully address plaintiffs and Monterey County's concerns or remedy the apparent retrogressive effect several of the consolidation ordinances have on Latino voting strength in Monterey County. It does, however, provide a mechanism to ensure the citizens' right to elect judges while an appropriate legislative solution to the problem is devised. Moreover, the shortening of terms mandates that the County of Monterey move expeditiously to develop and preclear a plan that complies with the Voting Rights Act and the constitutions of the United States and the State of California. A district court, faced with the evils of either disrupting state government or ordering interim relief that falls short of constitutional standards must sometimes adopt, on a temporary basis, an election system that may violate the constitution or federal law. Watkins v. Mabus, 771 F.Supp. 789 (S.D.Miss. 1991). In Kilgarlin v. Hill, 386 U.S. 120, 121 (1967), the Supreme Court stated: "We affirm the District Court's action in permitting the 1966 election to proceed under

H.B. 195 although constitutionally infirm in certain respects." In Upham v. Seamon, 456 U.S. 37, 44 (1982), the Court states that it has "authorized District Courts to order or to permit elections to be held pursuant to apportionment plans that do not in all respects measure up to the legal requirements, even constitutional requirements." In those instances the Court has cited "necessity" as the motivating factor. Id. Faced with the exigencies of imminent elections and the lack of viable options, the court may utilize an interim plan that may be legally infirm pending Monterey County's adoption and preclearance of a plan which complies with the Voting Rights Act and the United States and California constitutions.

This court has considered other options such as plaintiffs and Monterey County's request that the court authorize Monterey County to submit for preclearance either a permanent or temporary plan that will violate state constitutional provisions or statutes. Plaintiffs and Monterey County urge the court to authorize Monterey County to adopt a plan that permits a municipal court district to have less than 40,000 residents in violation of Article VI, Section 5 of the California Constitution, to divide the city of Salinas into two municipal court districts in violation of Government Code Section 71040, and to waive the state requirement of congruity of electoral base and jurisdictional base in violation of Article VI, Section 16(b) of the California Constitution. The state argues that an abdication of the requirement of congruence between jurisdictional and electoral base would pose serious problems by depriving people of voting rights. The state urges that, in any interim or permanent solution, the court not suspend the state law requirements that municipal court judges stand election before all of the voters in the district over which they will preside and candidates for municipal court reside in the district of their election. The court is satisfied that the adoption of a proposed plan as urged by Monterey County and plaintiffs as an interim solution would alter the structure embodied in the California constitution and

statutes, would do too much violence to legislative and state interests, and would create more problems than it solves. In fashioning a redistricting plan "or in choosing among plans, district courts should not ... 'intrude upon state policy any more than necessary.' " Upham v. Seamon, 456 U.S. 35, 42 (1982) (citation omitted).

The court's adoption of an interim plan with shortened terms reflects the urgency with which this court views Monterey County's responsibility to develop and preclear a plan that complies with the Voting Rights Act and the constitutions of the United States and the state of California. Monterey County is urged to seek any legislative changes or changes in the administrative structure of its courts that may be necessary in order to expeditiously adopt and preclear a viable plan.

ORDER

Good cause appearing, Monterey County is hereby ordered to hold municipal court elections in November for the Monterey Municipal Court District. The voting for each judicial seat up for election will be county-wide. The terms of the judges who are elected will expire on the first Monday of January of 1996. The court anticipates and expects that Monterey County will have in place for the next general election a plan that complies with the Voting Rights Act, that does not violate the constitution of the United States or the state of California and that is precleared by the Attorney General or the United States District Court for the District of Columbia.

The motion by plaintiff to vacate judicial appointments or shorten terms is denied except to the extent that the court by this order has determined that the terms of those elected in November should be shortened. Any party may file an objection or other comment or response to this tentative ruling by a brief not to exceed 10 pages in length by May 13, 1994. The matter will be deemed submitted as of that date. No further hearing will be held absent notice from the court that it desires to hear further oral argument.

DATED: 5/3/94

/s/
RONALD M. WHYTE
United States District Judge
On Behalf of the Panel

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA, Defendant.	NO. C 91 20559 RMW (EAI) ORDER GRANTING UNITED STATES' MOTION TO PARTICIPATE AS AMICUS CURIAE; ENJOINING ELECTIONS PENDING PRECLEAR-ANCE; AND DENYING MOTION TO VACATE JUDICIAL APPOINT-MENTS OR SHORTEN TERMS

BACKGROUND

In its order dated March 31, 1993, this court found that

certain Monterey County municipal court judicial district consolidation ordinances, which were adopted between 1968 and 1983, required preclearance pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, and that such preclearance had not been obtained. As a result of this court's order, Monterey County filed a declaratory judgment action pursuant to Section 5 in the United States District Court for the District of Columbia seeking judicial approval of these consolidation ordinances. Monterey County v. United States of America, Civil Action No. 93-1639 (CRR) (D.C.Dist. Colum. 1993). By an order filed on September 7, 1993, that court permitted the plaintiffs in this action to intervene. Monterey County then stipulated with plaintiffs that it would be unable to establish that these ordinances did not have the effect of denying the right to vote to Latinos in Monterey County due to the retrogressive effect several of these ordinances had on Latino voting strength in Monterey County. Pursuant to the parties' stipulation, the action in the District Court for the District of Columbia was dismissed.

Monterey County and plaintiffs then agreed to the implementation of an election system for the election of municipal court judges to the Monterey County Municipal Court District and requested this court to order the County of Monterey to adopt the system before preclearance. However, by order dated December 22, 1993, this court declined the request without prejudice because the court was not satisfied that a plan necessarily had to conflict with the California Constitution in order to comply with the Voting Rights Act. On January 13, 1994 the County of Monterey and plaintiffs submitted a new stipulation and proposed order in response to the court's order of December 22, 1993. The new plan also conflicted with certain provisions of the California Constitution and certain state laws.

On March 1, 1994, this court ordered the County of Monterey to submit to the Attorney General or the United States

District Court for the District of Columbia a new election plan for preclearance that complied with the Voting Rights Act and did not violate the state constitution or any law of the State of California. The court further ordered that if Monterey County were unable to submit a new election plan that complied with the Voting Rights Act without violating a provision of the California Constitution or a law of the State of California, it should show cause why it could not do so.

On March 16, 1994, in response to the order to show cause, Monterey County and plaintiffs submitted stipulations that included a list of 10 proposals and a citation to the state law violated by each respective plan. Stipulation 15 states that "[t]he Board of Supervisors is unable to devise or prepare any plan for the election of municipal court judges in Monterey County that does not conflict with at least one state law and still comply (sic) with the Voting Rights Act."

On May 3, 1994, this court issued a tentative order directing a county-wide election in November based upon an interim reapportionment plan. The court recognized that the interim plan, which was, in effect, the voting system implemented by the unprecleared ordinances, would not remedy the apparent discriminatory effect that the unprecleared voting system had on Latino voters. However, the court believed the interim plan, which called for shortened terms of those judges elected, would preserve the citizens' right to elect judges while a permanent legislative solution was being developed and a plan precleared. The court also felt that its interim plan created fewer problems than any of the solutions offered by the parties. The court allowed the parties until May 13, 1994 to file any comments or objections to its tentative order. All parties, except the State, filed responses raising questions about or objecting to the tentative order.

On May 13, 1994 the United States filed a motion for leave to participate as amicus curiae which the court hereby grants.

For the reasons set forth below, the court vacates its tentative order and hereby issues an injunction barring any elections for municipal court judges pending preclearance of a new voting system or further order of this court.

II. ANALYSIS

In its tentative order of May 3, 1994, the court concluded that the interests of the voters mandated holding an interim election under an unprecleared system pending Monterey County's adoption and preclearance of a plan that complies with state and federal law. The court is now convinced that permitting the voters to cast ballots under a plan that has not been precleared and that has an apparent retrogressive effect on Latino voting strength would not be in the best interest of the voters.

The Supreme Court has indicated that the three-judge court has limited discretion in fashioning an appropriate remedy in Section 5 cases. See e.g., Perkins v. Matthews, 400 U.S. 379, 441 (1971). Section 5 contemplates the remedy of injunctive relief. Brooks v. State Bd. of Elections, 775 F.Supp. 1470, 1482 (S.D.Ga. 1989). In the instant case, an injunction pending preclearance is the most appropriate remedy.

Redistricting and reapportionment are " 'primarily the duty and responsibility of the State through its legislative or other body, rather than of a federal court.' " Voinovich v. Quilter, ___ U.S. __, 113 S.Ct. 1149, 1157 (1993) (citation omitted). In the instant case, the County of Monterey has failed to devise and preclear a plan that conforms with both the Voting Rights Act and with state law. The very purpose of section 5 is to require preclearance before changes can be put into effect, and to avoid using litigation by voters as the mechanism for testing changes in voting laws. See e.g., McCain v. Lybrand, 465 U.S. 236, 243-44 (1984).

This court has considered the possibility of ordering an election in accordance with one of the plans proposed by the County and the plaintiffs. Under the plan preferred by them, one

of the municipal court districts would have less than 40,000 residents in violation of Article VI, Section 5 of the California Constitution, the City of Salinas would be divided into two districts in violation of Government Code Section 71040, and there would not be congruity of electoral base and jurisdictional base as required by Article VI, Section 16(b) of the California Constitution. The State objects to such a plan and argues that an elimination of the requirement of congruence between jurisdictional and electoral base would pose serious problems by depriving people of voting rights. The State urges that, in any interim or permanent solution, the court not suspend the state law requirements that municipal court judges stand election before all of the voters in the district over which they will preside and candidates for municipal court reside in the district of their election.

The court is satisfied that the adoption of a plan as currently proposed by Monterey County and plaintiffs as an interim solution would alter the structure embodied in the California constitution and statutes, would do too much violence to legislative and state interests, and would create more problems than it solves. In fashioning a redistricting plan "or in choosing among plans, district courts should not ...'intrude upon state policy any more than necessary.' " Upham v. Seamon, 456 U.S. 35, 42 (1982) (citation omitted). In its amicus brief, the United States additionally proposed, as a possible option, implementation, on an interim basis, of the election scheme that was in effect for municipal judges on November 1, 1968. However, as plaintiffs and the County have noted, such an alternative is not a workable interim solution.

The court believes that the county and the plaintiffs have acted in good faith in attempting to develop an appropriate plan, but the State has apparently not yet been involved in the process. The court recognizes that the task of developing a plan is a difficult one that will require plaintiffs, the County, and the State to work together. It also appears that a solution may require

state legislative action. The United States, through its amicus brief, has now volunteered to assist the parties in devising a system that complies with the Voting Rights Act. Therefore, the court concludes that the most appropriate remedy at this point is to enjoin an election pending preclearance of an appropriate redistricting plan and to allow the parties limited additional time to reach and implement a solution. If, however, the parties do not move forward expeditiously or are unable to reach a legislative solution, the court will have to take more drastic action including possible implementation of a judicially created redistricting plan. However, given the complexity of the problem, the fact that reapportionment tasks are best left to the legislature, and the fact that legislative solutions necessarily take some time, the court concludes that enjoining an election prior to preclearance is the most appropriate remedy at this time.

The court wishes to underscore the urgency with which it views Monterey County's responsibility to develop and preclear a plan that complies with state and federal law. The County is urged to promptly seek any legislative changes or changes in the administrative structure of its courts that may be necessary in order to expeditiously adopt and preclear a viable plan. The court has avoided developing its own plan only because it is convinced that the County has not neglected its legislative responsibilities and is committed to working with plaintiffs and the State to fulfill its reapportionment obligation.

In its motion for leave to participate amicus curiae, the United States has offered "to assist the parties in the development of an appropriate remedy if the court believes that such assistance would be beneficial." The State is currently a party to these proceedings. The court finds that it would be beneficial for the State and the United States to assist the County in the development and expedited preclearance of a plan that will comply with the Voting Rights Act and with federal and California state law (or at least minimally intrude on state

policy).[1]

ORDER

1. Monterey County is ordered to develop a plan for the election of municipal court judges which complies with the Voting Rights Act and intrudes on state policy no more than necessary. The County shall take any steps required to obtain changes in existing state law or county ordinances. The State shall participate and assist in the County's development of such a plan.

2. Monterey County is hereby enjoined from holding elections for municipal court judges pending adoption and preclearance of a new plan. The court requests the cooperation and the assistance of the United States in the development and preclearance process.

3. The court orders the parties to appear at a status conference on November 3 at 1:30 p.m. to report on their progress at which time the court will determine whether sufficient steps have been taken to justify continuing the injunction in effect or whether some other remedy needs to be fashioned. The parties should be prepared to inform the court of measures taken to effect any legislative changes or changes in the County's administrative structure that may be necessary, of any alternative plans that have been developed, and of a timetable for the implementation and preclearance of a plan.

The motion by plaintiffs to vacate judicial appointments or shorten terms is denied. The governor's appointment powers are not the subject of the Section 5 proceedings and the orderly administration of justice requires that vacancies by appropriately filled. Any judges appointed will have to face election under the new redistricting plan.

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[1] The court has not foreclosed the possibility of authorizing a plan for preclearance that violates existing state law, if the court is satisfied that intrusion upon state policy is necessary.

DATED: 6/1/94

/s/
RONALD M. WHYTE
United States District Judge
On Behalf of the Panel

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, et al., Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA, Defendant. STATE OF CALIFORNIA; MICHAEL FIELDS Intervenor-Defendants.	NO. C-91-20559 RMW (eai) SUPPLE-MENTAL MEMO-RANDUM OF POINTS AND AUTHORITIES

Pursuant to the Court's order of November 3, 1994, Intervenor State of California respectfully submits the following memorandum of law of points and authorities:

INTRODUCTION

In 1971, Monterey County became subject to the "preclearance" requirements of Section 5 of the Voting Rights Act. (42 U.S.C. § 1973c.) That requirement applied to changes in any voting practice that was in place as of November 1, 1968.

(See 28 C.F.R. Part 51 Appendix.) According to this Court's decision on the merits, the judicial district consolidation efforts which required preclearance began in 1972 with the adoption of Monterey County Ordinance No. 1852. (Order Granting Plaintiffs' Motion for Partial Summary Judgment and Denying Defendant's Motions, p. 3.) Those efforts continued until 1983, culminating in the adoption of Ordinance No. 2930, which consolidated the County's remaining judicial districts into the single Monterey County Municipal Court District. (*Ibid.*) In September 1991, plaintiffs brought an action under Section 5 of the Voting Rights Act seeking to unravel two decades of systematic changes in the municipal court districting scheme for Monterey County.

The Court granted plaintiffs' motion for summary judgment, finding that "the County ordinances disputed herein constitute a change in voting procedure different from that in force or effect on November 1, 1968." (Order dated April 1, 1993.) It now devolves upon the County either to return to the status quo ante (cf., Brooks v. State Bd. of Elections, 775 F.Supp. 1470, 1480 (S.D. Ga. 1989)), or to adopt a municipal court election plan that will satisfy Section 5 preclearance standards when compared with earlier election arrangements.

The County now complains, however, that, because of significant changes in California law since 1972, it is not now feasible to return to the status quo ante.[1] The County also contends that California constitutional requirements render it impossible to create municipal court election plans that will

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[1] It appears that the County did not assert a bar of laches and did not contend that plaintiffs' action was barred by a statute of limitations. Nevertheless, undue passage of time is a factor that may properly be considered by the Court in fashioning an appropriate temporary remedy. (Lopez v. Hale County, Texas, 797 F.Supp. 547 (N.D. Tex. 1992), aff'd, 113 S.Ct. 954.)

satisfy preclearance requirements.[2]

The County represents that it has unsuccessfully sought changes in the state constitution in order to relieve one or the other of two perceived obstacles to preclearance: (1) The state Constitution's prohibition against dividing cities between

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[2] The State takes no position on the County's contentions. Any remedial plan adopted by the Legislature cannot have the effect of segregating voters on the basis of race more than is absolutely necessary to accomplish nonretrogression. (Shaw v. Reno, ___ U.S. ___, 113 S.Ct. 2816, 2831 (1993) ["A reapportionment plan would not be narrowly tailored to the goal of avoiding retrogression if the [jurisdiction] went beyond what was reasonably necessary to avoid retrogression."]) Absent satisfaction of the criteria set out in Thornburgh v. Gingles, 478 U.S. 30 (1986), the failure to maximize minority voting strength does not establish a Section 2 violation. (Johnson v. DeGrandy, ___ U.S. ___, 62 U.S.L.W. 4755, 4759-4761 (1994); see also, Growe v. Emison, 507 U.S. ___, 113 S.Ct. 1075, 1076 (1993) ["Unless these points are established, there neither has been a wrong nor can there be a remedy"].) Accordingly, if the County is here attempting to fashion a remedy for a Section 2 violation in the absence of any determination that such a violation occurred, then the County is seeking to accomplish more than is necessary to satisfy Section 5.

It appears that no plans have yet been submitted to the Attorney General for preclearance, and if the Attorney General has informally advised the County that she would object to some particular districting arrangement or arrangements if offered, certainly the Court has not been advised of that fact. Neither has the Court been advised of any election plans that may have been discussed informally with the Department of Justice, or of the Attorney General's reasoning in advising that a proposal would be rejected if offered.

municipal court districts (Cal. Const., art. VI, § 5); and (2) the state Constitution's mandate that municipal court judges stand election before the whole electorate of their district (Cal. Const., art. VI, § 16(b)). (Cf., Cal. Const., art. VI, § 5(b) [permitting City of San Diego to be divided into more than one municipal court district at Legislature's discretion].) Nevertheless, the County represents that it intends to proceed to adopt a plan for preclearance, but asks the Court to set "ground rules."

It is not the responsibility of this Court to decide whether or not any election scheme adopted by the County would satisfy preclearance standards; that responsibility is lodged exclusively with the Attorney General or the United States District Court of the District of Columbia. (42 U.S.C. § 1973c; see Brooks v. State Bd. of Elections, 775 F.Supp. 1470 (S.D. Ga. 1989), aff'd., 498 U.S. 916 [court did not have the power to "equitably preclear" any changes in voting procedures; burden was on covered jurisdiction to seek preclearance].) Accordingly, it would be inappropriate for this Court to impose "ground rules" in the sense of relieving the County from state constitutional restrictions in the fashioning of a municipal court plan, on the assumption that a plan adopted pursuant to the "ground rules" would satisfy preclearance standards.[3]

This Court's responsibility is limited to providing such temporary relief as may be necessary in order to permit elections to be properly conducted for municipal court judges pending preclearance of a legislatively adopted plan. It is in that context, therefore, that the Court must consider the two

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[3] Furthermore, there is no basis whatsoever for the Court to relieve the County from any of the state Constitution's restrictions. Neither of the constitutional restrictions assertedly burdening the County has been determined to violate the United States Constitution or Section 2 of the Voting Rights Act.

alternative proposals submitted by the County.[4]

Alternative No. 1 would have the Court create two municipal court districts, dividing the City of Salinas between the two districts in violation of article VI, section 5, of the California Constitution. Alternative No. 2 would have the court create "election areas" within a single municipal court district. Judges would be elected from an "election area" within the municipal court district, but would serve throughout Monterey County. (Cf., Martin v. Mabus, 700 F.Supp. 327 (S.D. Miss. 1988).) Alternative No. 2 is the practical and administrative preference of the County. The United States, as amicus curiae, also takes the position that Alternative No. 2 is the lesser intrusive option, because it would not require the creation of two municipal court districts.

I

ELECTION AREA "SUBDISTRICTING" WOULD UNCONSTITUTIONALLY DISFRANCHISE VOTERS OF THE MONTEREY COUNTY MUNICIPAL COURT DISTRICT ON ACCOUNT OF RACE

A. Alternative No. 2 Is Presumptively Invalid And Can Only Be Justified By Proof Of A Compelling State Interest

The California Constitution guarantees to residents of a trial court judicial district the right to vote for the judge or judges of that district. (Cal. Const., art. VI, § 16(b);

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[4] Although the County requested that the Court order an election in June 1995, the County has submitted no other proposals for temporary relief in order that such an election might take place, e.g., shortened terms of office. All of the County's proposals anticipate the architecture of a final and permanent election plan which the County would submit to the Attorney General for preclearance.

Koski v. James, 47 Cal.App.3d 349, 354 (1975).) The County's Alternative No. 2 would have the Court deny residents of the Monterey County Municipal Court District the right to vote for some of their judges in that district. (Cf., League of United Latin American Citizens v. Clements, 999 F.2d 831, 873 (5th Cir. 1993), cert. denied, ___ U.S. ___, 114 S.Ct. 878 (1994) ["Subdistricting would partially disenfranchise citizens to whom all district judges in a county are now accountable"]; Southern Christian Leadership Conference v. Evans, 785 F.Supp. 1469, 1478-1479 (M.D. Ala. 1992) [electoral "subdistricts" implicate the right to vote and significant state interests].)[5] This, of course, is no small matter: "The right to vote freely for the candidate of one's choice is of the essence of a democratic society." (Reynolds v. Sims, 377 U.S. 533, 555 (1964).)[6]

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[5] The Court will recall that the only reason the Voting Rights Act applies at all to trial court judges is because the Supreme Court has ruled that trial court judges are to be considered "representatives" within the meaning of Section 2 of the Voting Rights Act. (Houston Lawyers' Assn. v. Attorney General, 501 U.S. ___, 115 L.Ed.2d 379, 386 (1991).) While Alternative 2 affords every elector in Monterey County the opportunity to elect one or some of his or her representatives on the municipal court bench, the plan is expressly intended to deny every elector the opportunity to elect all of his or her representatives. To the extent that electors, because of their race, are deprived of the opportunity to elect one or more of their representatives, Alternative 2, on its face, would seem to contravene both the letter and the spirit of 42 U.S.C. § 1973(a).

[6] The State has already expressed to the Court its concern that, in addition to implicating Equal Protection and Fifteenth Amendment guarantees, Alternative 2 would adversely affect the State's interest in what the Fifth Circuit calls

Alternative No. 2 cannot be equated with mere "race conscious" legislative-district line drawing. In the latter case, race might be taken into consideration as a factor in the drawing of the district lines, along with other traditional districting factors. In such a case, segregation of voters on the basis of race is incidental to a race-neutral purpose, viz., the drawing of legislative district lines. Here, however, the purpose of the line drawing altogether is hardly race-neutral. There already exists an electoral district for the purpose of electing municipal court judges. Segregation of voters into "election

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"linkage," i.e., preserving the contiguity between electoral base and jurisdictional base. The fact that municipal court judges may sit by occasional, ad hoc assignment on cases in jurisdictions from which they were not elected does not detract from the significance of the State's interest in this regard. (See League of United Latin American Citizens v. Clement, supra, 999 F.2d at 874.)

Although one district court has suggested that "linkage" is not necessarily an important state interest (Cousin v. McWherter, 840 F.Supp. 1210 (E.D. Tenn. 1994)), others appear to disagree. (See, Southern Christian Leadership Conference, supra, 785 F.Supp. at 1478.) The Fifth Circuit notes that virtually all of the states that provide for the election of their trial court judges employ district-wide elections. (League of United Latin American Citizens, supra, at 872 and n. 33.) As that court observed: "The overwhelming preservation of linkage in states that elect their trial court judges demonstrates that district-wide elections are integral to the judicial office and not simply another electoral alternative." (Ibid.) Indeed, in light of the Fifth Circuit's sweeping recognition of "linkage" as a universally recognized state interest, Martin v. Mabus, supra 700 F.Supp. 327, is hardly weighty precedent any longer for subdistricting as an appropriate remedy in judicial Voting Rights Act cases.

areas" on the basis of race is the very raison d'être of Alternative No. 2 -- as a race-based alternative to the existing system.[7]

Because racial segregation is the sole motivating purpose for creation of "election areas" it is per se constitutionally suspect. Equal Protection guarantees of strict scrutiny "apply not only to legislation that contains explicit racial distinctions, but also to those 'rare' statutes that, although race-neutral, are, on their face, 'unexplainable on grounds other than race.' " (Shaw v. Reno, supra, 113 S.Ct. at 2825.) The Fourteenth Amendment, therefore, requires "extraordinary justification" for subdistricting of judicial elections. (Personnel

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[7]Nor can Alternative 2 be equated with the substitution of election districts for an "at large" election scheme. The Fifth Circuit observed: "Unlike legislators or even appellate judges, who make decisions in groups, each district judge holds a single member office and acts alone. When collegial bodies are involved, all citizens continue to elect at least one person involved in making a particular decision. While subdistricting for multimember offices can enhance minority influence because members from minority subdistricts participate in and influence all of the decisions of the larger body, subdistricting for single-member district court judgeships would leave minority voters with no electoral influence over the majority of judges in each county." (League of United Latin American Citizens v. Clements, supra, 999 F.2d at 9873.) In this regard, the Supreme Court has warned: "Racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters -- a goal that the Fourteenth and Fifteenth Amendments embody." (Shaw v. Reno, supra, 113 S.Ct. at 2832.) Indeed, there is "a certain irony in using the Voting Rights Act to deny citizens the right to select public officials of their choice." (Brooks v. State Bd. of Education, 848 F.Supp. 1548, 1568 (S.D. Ga. 1994); see note 6, supra.)

Administrator of Massachusetts v. Feeney, 442 U.S. 256, 272 (1979), quoted in, Shaw v. Reno, supra, 113 S.Ct. at 2816.)

B. Alternative No. 2 is Not A Narrowly-Tailored Temporary Remedy For A Section 5 Violation

The State respectfully submits that there is no sufficient justification for a race-based disfranchisement scheme here. It cannot be overemphasized that this is not a case arising under Section 2 of the Voting Rights Act; this case arises under Section 5 of that Act.[8] The mere fact that the existing municipal court election scheme was not precleared does not mean that the scheme is necessarily subject to vote dilution challenge under Section 2. (Holder v. Hall, ___ U.S. ___, 62 U.S.L.W. 4728, 4731 (1994).) Retrogression, the inquiry for purposes of preclearance, is not the inquiry of Section 2. (Ibid.; see also, Johnson v. DeGrandy, ___ U.S. ___, 62 U.S.L.W. 4755, 4759-4761 (1994) [failure to maximize minority voting strength, standing alone, does not necessarily establish a Section 2 violation].) Indeed, the question whether the county-wide scheme for electing trial court judges in Monterey County violates Section 2 of the Voting Rights Act is presently pending before this Court in another case: Trujillo v. State of California, No. C-92-20465 RMW (EAI).

In the absence of proof that the existing county-wide system for electing municipal court judges is unconstitutional or violative of Section 2 of the Voting Rights Act -- an issue not presented by these proceedings -- there is no justification whatsoever for disfranchising voters on the basis of race as a temporary remedy pending Section 5 preclearance of an election scheme fashioned by the County. (See, Brooks v.

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[8] The State does not concede that race-based sudistricting of judicial districts would be an appropriate remedy even in a Section 2 case. (See League of United Latin American Citizens v. Clements, supra, 999 F.2d 831.)

State Bd. of Elections, supra, 848 F.Supp. at 1567.) The fact that Alternative No. 2, if adopted by the County, might satisfy Section 5's preclearance standards, does not mean that the plan is immune from constitutional challenge. No Section 5 decision of the Supreme Court gives jurisdictions carte blanche to engage in racial gerrymandering in the name of nonretrogression. (Shaw v. Reno, supra, 113 S.Ct. at 2831.) "A reapportionment plan would not be narrowly tailored to the goal of avoiding retrogression if the [jurisdiction] went beyond what was reasonably necessary to avoid retrogression." (Ibid.)

In this case, the County has proffered only one other alternative to avoid retrogression, viz. the creation of more than one municipal district, dividing the City of Salinas between two districts. While this may not be the County's preferred alternative, it is an alternative that does not deny voters the opportunity to elect all of the judges in the district wherein the voter resides. Moreover, no disfranchisement is effected on account of race.[9]

II

THE COURT NEED NOT ACCEPT THE ALTERNATIVES PRESENTED BY THE COUNTY

The task before this Court is the fashioning of a temporary remedy to permit municipal court elections to proceed pending legislative adoption of an election plan that will satisfy Section 5 preclearance requirements. How the County fashions such a final plan within the restrictions of California law

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[9] Even if it be conceded that creation of multiple municipal court districts would enable the County to satisfy the nonretrogression requirements of Section 5, the district configurations themselves may still be subject to constitutional challenge unless they are narrowly tailored to effectuate nonretrogression only. (Shaw v. Reno, 113 S.Ct. at 2830-2831; see note 2, supra.)

is a matter for discussions between the County and the United States Attorney General.

There appears to be no justification for requiring the Court to restructure municipal court election districts, whether according to Alternative No. 1 or Alternative No. 2, in order to accomplish a temporary purpose -- this is not a Section 2 case, but a Section 5 case. Other, less dramatic, temporary remedies might be available, e.g., shortened terms of office coupled with periodic reports to the Court by the County and the United States concerning efforts to fashion a satisfactory election plan for the limited purpose of satisfying Section 5 of the Voting Rights Act.[10]

CONCLUSION

Of the two alternatives proffered by the County, Alternative No. 1 would have the Court order the creation of two municipal court districts for purposes of conducting elections in June. Alternative No. 2 would have the court deny citizens the right to vote for some of the judges in the municipal court district -- on the basis of race.

To be sure, a federal court order to create a separate municipal court district is a rather drastic remedy, particularly as a temporary measure in a Section 5 case. However, the only other alternative proffered by the County for temporary relief limits significant federal constitutional rights without adequate justification.

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[10] The state constitutional restrictions that are perceived to be obstacles by the County are presumptively valid. Accordingly, in light of the considerable passage of time before plaintiffs brought their Section 5 claim, it may not now be feasible to accomplish perfect nonretrogression at this late date consistent with California law. Whether that is, in fact, the case, and how such an eventuality might bear on the Attorney General's decision whether to interpose an objection to a final plan, are issues not presently before the Court.

Inasmuch as Alternative No. 1 exists as an option for the Court that has been recommended by the County, as a matter of law, Alternative No. 2 cannot be said to be the most narrowly tailored temporary remedy for a violation of Section 5 of the Voting Rights Act. Accordingly, if the Court is going to choose between Alternative No. 1 and Alternative No. 2, for purposes of temporary relief, the Court must select Alternative No. 1.

DATED: November 10, 1994

Respectfully submitted,
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/s/

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(Declaration of Service Omitted in Printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA, Defendant.	NO. C 91 20559 RMW (EAI) ORDER ENJOINING ELECTIONS PENDING PRECLEAR-ANCE OF PERMANENT PLAN EXCEPT FOR COURT-ORDERED SPECIAL ELECTION IN 1995

I. INTRODUCTION

This is a case in which the plaintiffs challenged the implementation of six Monterey County ordinances on the ground that they were not precleared as required by the Voting Rights Act, 42 U.S.C. § 1973c. The ordinances consolidated two municipal and seven justice court districts into a single municipal court district with the judges being elected at large from the entire county. The court previously determined that the ordinances were subject to preclearance and that preclearance had not been obtained. The County then sought preclearance but

discontinued its effort stipulating that it could not establish that the consolidation ordinances did not have the effect of denying the right to vote to Latinos as a result of the retrogressive effect that consolidation had on Latino voting strength. Pursuant to this court's order which included an injunction prohibiting an election pending adoption and preclearance of an election plan,[1] the County next attempted to secure an amendment to the California Constitution regarding the configuration of districts, so it could implement an election plan that complied with the Voting Rights Act and did not violate any provision of California law. The County was unsuccessful. The question now facing the court is what remedy, under the circumstances, is appropriate.

II. SUMMARY OF CURRENT ISSUE BEFORE COURT AND DECISION THEREON

Plaintiffs and Monterey County urge the court to allow elections to take place under a plan that would involve maintaining the current single, county-wide district but with election areas. This plan would eliminate linkage between the judges' jurisdictional and electoral bases and would split the City of Salinas into two areas for election purposes. However, it would allow the County to continue its current administrative scheme for the county-wide operation of the municipal courts. As an alternative, plaintiffs and the County ask that the court authorize the County to implement a plan which would include more than one district and would split the City of Salinas.[2] This

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[1] The County has chosen not to attempt to obtain preclearance of a plan that potentially violates state law in any way without this court's permission, apparently believing that any attempt to do so would result in preclearance rejection or be futile.

[2] Return to the last lower court district plan in effect before passage of the subject ordinances was conceded by plaintiffs and the County to be impractical.

plan would require substantial administrative changes in the operation of the courts. The State of California and Municipal Court Judge Fields, both of whom have intervened, object to the proposals made as unnecessarily intrusive on state interests.

For the reasons set forth below, the court hereby continues its injunction prohibiting Monterey County from holding elections for municipal court judges pending adoption and preclearance of a permanent plan, except the court orders that a special election be held in 1995 to protect the rights of the citizens to elect judges while a permanent legislative solution is being developed and precleared. The court-ordered special election will be held pursuant to an election area plan, specifically the "Municipal Court Division Plan" as described in the Second Stipulation presented to the court by plaintiffs and the County on January 13, 1994. The terms of the judges elected will expire on the first Monday in January 1997.

III. BACKGROUND

Prior to 1968, Monterey County had two municipal and seven justice court districts. By ordinances enacted by the County between 1968 and 1983, those districts were consolidated so as to provide for one municipal court district with judges elected at large from the entire county. The consolidation ordinances were subject to review under Section 5 of the Voting Rights Act and, on September 6, 1991, plaintiffs herein filed this Section 5 enforcement action seeking declaratory and injunctive relief requiring the County to seek preclearance of the ordinances before enforcing them further. Pursuant to 28 U.S.C. § 2284, the case was assigned to this three-judge court. On March 31, 1993, this court found that the ordinances did, in fact, require preclearance, that such preclearance had not been obtained, and that the ordinances could not be enforced without preclearance. In response to the court's order, the County, on August 10, 1993, filed a declaratory judgment action in the United States District Court for the District of Columbia to obtain after-the-fact preclearance

of the ordinances. County of Monterey v. United States of America, No. 93-1639 (D.D.C. filed Aug. 10, 1993). That action was subsequently dismissed upon a stipulation that "[t]he Board of Supervisors is unable to establish that the Municipal Court Judicial Court Consolidation Ordinances adopted by the County between 1968 and 1983 did not have the effect of denying the right to vote to Latinos in Monterey County due to the retrogressive effect several of these ordinances had on Latino voting strength in Monterey County." Monterey County, Cal., Resolution 94-107 (March 15, 1994).

Monterey County and plaintiffs then agreed to the implementation of an "Election Area Plan" for the election of municipal court judges and requested that this court order the County to adopt the system. The Election Area Plan consisted of seven election areas which were specific geographic areas in which only the residents could vote. The areas were to be used solely for election purposes and there would remain only one county-wide municipal court district for all other purposes. The parties acknowledged that the plan might conflict with Article VI, Section 16(b) of the California Constitution, since it removed the linkage between a judge's electoral and jurisdictional bases. They asked the court to authorize the County to adopt the plan and the County stated that it would then seek preclearance. The State of California asked to intervene and objected to the issuance of an order authorizing the plan. The court, by order dated December 22, 1993, allowed the State to intervene and declined without prejudice to approve the proposed Election Area Plan because it was not satisfied that a plan necessarily had to conflict with the California Constitution in order to comply with the Voting Rights Act. Judge Michael S. Fields, a municipal court judge, was also allowed to intervene in his personal capacity.

On January 13, 1994 the County submitted a new stipulation and proposed order in response to the court's order of December 22, 1993. The new proposed plan, entitled

"Municipal Court Division Plan," called for four divisions. The divisions, like the areas in the previously proposed Election Area Plan, were specific geographic areas in which only the residents could vote. The divisions were to be used solely for election purposes and not for assignment of cases, court locations, or any other purpose. Plaintiffs and the County suggested that the Division Plan did not violate the state constitution, but requested the court to approve it even if it felt otherwise. The State and Judge Fields objected to acceptance of the Division Plan on the basis, among others, that it violated Article VI, Section 16(b) of the California Constitution, which requires that judges be elected in their counties or districts. In its order dated February 28, 1994 the court again stated that it was not satisfied that an election plan had to conflict with the California Constitution in order to meet the requirements of the Voting Rights Act and implicitly held that the Division Plan in fact did so conflict. The court further ordered that the County submit for preclearance an election plan that complied with the Voting Rights Act and all applicable provisions of the California Constitution and state law, or show cause why it could not do so.

On March 31, 1994, in a hearing to show cause, the County explained why it could not submit the requested plan for preclearance and referred to Board of Supervisors' Resolution 94-107, which made certain findings supporting the Board's conclusion that "[t]he Board of Supervisors is unable to devise or prepare any plan for the election of municipal court judges in Monterey County that does not conflict with at least one state law and still comply with the Voting Rights Act." On June 1, 1994 the court issued its order enjoining Monterey County from holding elections for municipal court judges pending adoption and preclearance of a plan for their election. The County was ordered to take the necessary steps to obtain changes in existing state law and county ordinances to effectuate such a plan. The parties were also ordered to appear on November 3, 1994 to report on their progress.

Following the court's order of June 1, 1994, the County made a good faith effort to secure passage of an amendment to the California Constitution regarding the configuration of municipal court districts in Monterey County. The efforts were unsuccessful for reasons that appear unrelated to any controversy regarding the proposed amendment. Plaintiffs and Monterey County now urge the court to allow elections to take place under the Municipal Court Division Plan which they had proposed to the court on January 13, 1994. As an alternative, they ask that the court authorize the County to implement a plan which would include districts that split cities.

IV. ANALYSIS

> The final step for the three-judge court is to determine "what remedy is appropriate." Section 5 contemplates injunctive relief, which is by its nature equitable. Moreover, the Supreme Court has indicated that the three-judge court has some limited discretion in fashioning a remedy by directing that the court must fashion an "appropriate" remedy. *See e.g, Perkins v. Matthews*, 400 U.S. 379, 441; 91 S.Ct. 431, 441, 27 L.Ed. 2d 476 (1971) (questions of appropriate remedy for district court) ....

Brooks v. State Board of Education, 775 F. Supp. 1470, 1482 (S.D. Ga. 1989).

Since the County did not obtain preclearance for the consolidating ordinances it enacted after 1968, this court must enjoin elections under those ordinances. The question that remains then is how, under the existing circumstances, should the court further "fashion an appropriate remedy" under its equitable powers. A return to the system that was last in effect before the adoption of the unprecleared ordinances is impractical and no party seems to seriously advocate that even as an interim

solution.[3] Continuance of the injunction without any election pending implementation of a precleared system would deprive the voters of their right to elect judges. Obviously, the court cannot overlook the importance of the citizens' right to elect judges while a permanent legislative solution is being developed and precleared. A memorandum dated January 11, 1994 from the Registrar of Voters shows that seven of the ten judicial offices would have been up for election in 1994 but for the preclearance problem and the court's injunction. As noted in Wise v. Lipscomb, 437 U.S. 535, 540, 98 S. Ct. 2493, 2497 (1978) (citation omitted):

> Legislative bodies should not leave their reapportionment tasks to the federal courts; but when those with legislative responsibilities do not respond, or the imminence of a state election makes it impractical for them to do so, it becomes the "unwelcome obligation" of the federal court to devise and impose a reapportionment plan pending later legislative action.

Therefore, the court concludes that its remedy must allow for an

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[3] The last lower court district plan in effect at the time Monterey County became a covered jurisdiction consisted of two municipal districts, with two municipal court judges in each such district, and seven justice court districts with one justice court judge in each such district. Monterey County, Cal., Ordinance 1347, as amended by Ordinance 1597. In addition to resolving problems associated with the fact that seven of the districts were justice court districts and the total number of municipal court judges is now ten, the districts would have to wrestle with the fact that several of the districts would be very small. This would undoubtedly result in administrative problems including frequent assignment of judges to districts other than their own.

election pending the implementation of a permanent legislative solution. See Berry v. Doles, 438 U.S. 190, 98 S.Ct. 2692 (1978) (suggesting that a special election could be considered by the district court if Section 5 approval was not obtained for a voting change). The interim election plan shall call for a special election in 1995 that is not unduly intrusive on state law and policies and not unreasonably disruptive to the County's interests in effective and efficient delivery of municipal court services. Under the Supremacy Clause, the implementation of relief for a violation of the Voting Rights Act must take precedence over enforcement of state law that stands in the way of effective relief. See Katzenbach v. Morgan, 384 U.S. 641, 646-47 (1966). The terms of those elected, however, will expire on the first Monday in January 1997, so that the County understands that it must have a permanent solution in effect by the time of the next general election or it will risk being without judges.

The court is satisfied that there are only two viable alternatives for an interim, emergency election plan.[4] One is to authorize the County to implement an interim plan which includes districts that split the City of Salinas. This would require the court to "suspend" application of Article VI, Section

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[4] The court does not imply that the consolidation ordinances which the court found had not been precleared necessarily resulted in a voting procedure that violates Section 2 of the Voting Rights Act (42 U.S.C. 1973(a)), i.e. that the voting procedure results in a denial of the right of any citizen to vote on account of race or color. While evidence has been offered to that effect by the stipulation between plaintiffs and defendant County, this court has not made such a finding. However, the court is reluctant to consider a single district, county-wide election plan as a temporary remedy in light of the supported stipulation that such a plan would be retrogressive in terms of Latino voting strength.

5 of the California Constitution in order to allow compliance with the Voting Rights Act. This approach is favored by the State and Judge Fields over the second alternative discussed below, although the State contends that there is no basis for the court to relieve the County from any of the state's constitutional restrictions.[5]

The other alternative is to permit the County to implement a temporary election plan that is predicated on the Municipal Court Division Plan such as described in the Second Stipulation submitted to the court in January 1994. Under this plan, a judge's jurisdictional and electoral bases would not be coterminous. This plan would require the "suspension" of Article VI, Section 16(b) of the California Constitution. It would also

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[5] The State's brief is not clear as to whether the State believes that the court has no basis for relieving the County from any of the State's constitutional restrictions on a temporary basis or whether it only objects to the court's attempting to give some sort of permanent authorization to violate state law. The court agrees with the State that any attempt to give the County approval to violate existing state law on a permanent basis is, at this time, beyond the scope of this court's function. However, temporary relief is necessary to enable elections to go forward at this time without violating the Voting Rights Act. The State's suggestion that an election with shortened terms of office coupled with periodic reports to the court would be a less drastic solution does not address the question of under what plan such an election would take place. As noted earlier, no party seems to question the County's assertion that it is not now feasible to return to the status quo ante. In fact, any attempted return to the districts existing in 1968, the date of the last lawful judicial district map adopted the Board of Supervisors, would result in judges being frequently and regularly assigned outside their districts.

require the splitting of the City of Salinas.

The court has considered in analyzing alternatives for an interim plan the recent en banc decision in Nipper v. Smith, No. 92-2588, 1994 WL 642754 (11th Cir. Dec. 2, 1994), in which black voters and an association of black attorneys contended that the use of at-large elections in trial court jurisdictions diluted the voting strength of the black minority in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973(a). The court found that plaintiffs had established vote dilution, but that none of the remedies sought provided an objectively reasonable and workable solution to the vote dilution and that they would actually undermine the court's ability to administer justice. Id. at *47-51. The proposed remedies included alternatives of electoral subdistricts and the creation of new circuits which would contain sufficient black voters to enable them to elect a candidate of their choice.

In the present case, the court is not faced with deciding whether a voting scheme violates Section 2. It is presented with the problem of what interim solution should be implemented pending the legislative enactment of a precleared voting plan. Evidence has been offered that Latino voters have had their voting strength diluted and, therefore, a special election under an at-large system would probably preclude them from electing any judge of their choice. On the other hand, persuasive evidence has not been offered that the court's ability to administer justice would be undermined by the two alternatives under consideration. The court, however, acknowledges that ultimately an at-large system or a system different from either of the two proposed alternatives may prove, under the totality of circumstances, to be the best judicial election scheme.

The prohibition against dividing a city into more than one district is set forth in Article VI, Section 5(a) of the California Constitution which provides in part: "Each county shall be divided into municipal court and justice court districts as provided by statute, but a city may not be divided into more than

one district."[6] The State's interest in preventing the division of cities does not appear to reflect any compelling state policy. In fact, the City of San Diego has been specifically authorized to divide cities if "the Legislature determines that unusual geographic conditions warrant such division." Cal. Const. art. VI, § 5(b). However, the creation of a multidistrict plan in Monterey County would require substantial administrative changes which would necessarily include reassignment of personnel, setting up new administrative procedures and the like. Further, these changes might be in effect for only the time period preceding the adoption of a permanent precleared plan. The court, therefore, finds that while a one-time, temporary suspension of the application of the city splitting prohibition would not interfere with a compelling state interest, implementation of a temporary multidistrict municipal court district plan would significantly interfere with the County's ability to provide uninterrupted efficient and effective delivery of municipal court services.

The proposed division plan allows the County to continue administratively operating the municipal courts in the county as it currently does. The problem, of course, is that the plan involves a separation of the electoral and jurisdictional bases of municipal court judges. Article VI, Section 16 provides that "[j]udges of [municipal] courts shall be elected in their counties or districts at general elections." Therefore, this division or election area plan denies residents of the Monterey County Municipal Court District the right to vote for some of the judges in the county-wide district. At first glance, this would seem to constitute a substantial intrusion on state interests. As the State points out, historically, municipal and small claims courts have been intended to be responsive to the ordinary

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[6] California Government Code Section 71040 similarly prohibits the dividing of a city so that it lies within more than one district.

affairs of the citizens of their districts.[7] Several courts have noted that linkage between electoral and jurisdictional bases is a recognized state interest: "The overwhelming preservation of linkage in states that elect their trial court judges demonstrates that district-wide elections are integral to the judicial office and not simply another electoral alternative." League of United Latin American Citizens v. Clements, 999 F.2d 831, 872 (5th Cir. 1993); see also Nipper v. Smith, 1994 WL 642754 at *47-51.

However, on closer analysis the intrusion on state law does not seem as substantial as it initially appears. The process of municipal courts extends throughout the state, Cal. Civ. Proc. Code § 84, and, therefore, the jurisdiction of a municipal court judge extends outside the geographic limits of the judge's district. In addition, Article VI, Section 15 of the California Constitution provides that "[a] judge eligible for municipal court service may be assigned by the Chief Justice to serve on any court." This provision authorizes the Chief Justice to assign municipal court judges from one municipal court district to serve in other municipal court districts. Sometimes the Chief Justice issues "blanket assignments." As noted in the 1994 Annual Report of the Judicial Council of California:

> Blanket (within county) and reciprocal (between counties) assignments are issued each year by the Chief Justice to permit judges of one court to sit

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[7] The State also contends that the implementation of the division plan proposed by plaintiffs would raise many questions about the authority and status of "election area" judges. These concerns seem somewhat unfounded, since the proposal only concerns the election process and does not otherwise attempt to affect the authority and status of the judges. Further, the plan is not being implemented as a legislative solution to the existing Voting Rights Act problem facing the County, but is rather being implemented by the court as an interim, emergency solution to insure the voters' right to elect municipal court judges.

> as judges of another court within their county or in a neighboring county. A total of 193 blanket assignments and 73 reciprocal assignments were issued during fiscal year 1992-93.

Judicial Council Report at 167.

These facts show that in practice the rights of nonresidents are often judged by resident judges. Also, nonresident judges are frequently assigned to other districts. Therefore, as a practical matter, linkage between a judge's electoral and jurisdictional bases cannot be considered an overwhelmingly strong public policy. The district court in Cousin v. McWherter, 840 F. Supp. 1210, 1220 (E.D. Tenn. 1994) so recognized in holding that the use of a single, at-large district for election of voters violated the Voting Rights Act:

> The Court finds that this policy underlying the practice of county wide election for judges is tenuous if a totality of circumstances test is utilized. Any voter in any number of different situations may be subjected to the jurisdiction of a judge for which they had no opportunity to vote such as a federal judge, or a judge in another county or another state. Judges routinely respond to litigants who will not have the opportunity to vote for the judge in an election. There is never a guarantee that jurisdiction and electorate will be coextensive.

The dissenting judges in Nipper also questioned the importance of linkage as a component of state policy. Nipper v. Smith, 1994 WL 642754 at *61-62. Although an election division plan as proposed will undoubtedly cause more parties to have their cases heard by judges who did not elect them, there is no strict linkage presently existing in California courts.

The concern of the State and Judge Fields that an election area plan may violate the Equal Protection clause of the Fourteenth Amendment seems unfounded. No case has been

cited which comes to that conclusion. However, several courts have remedied violations of Section 2 of the Voting Rights Act in cases involving at-large or circuit-wide judicial election systems by ordering the use of election sub-districts that are not coterminous to the jurisdictional bases of the elected judges. See Clark v. Roemer, 777 F. Supp. 471 (M.D. La. 1991), appeal dismissed, 958 F.2d 615 (5th Cir. 1992) (Louisiana trial and appellate courts); Martin v. Mabus, 700 F. Supp. 327 (S.D. Miss. 1988) (circuit, chancery, and some county court judges); and Hunt v. Arkansas, No. 89-406 (E.D. Ark. Nov. 7, 1991) (consent decree concerning trial courts of general jurisdiction).

The court, therefore, concludes that the Municipal Court Division Plan, as an interim plan, minimally intrudes on state interests and enables the County to maintain its current administrative operation of the municipal courts while it is working for a permanent legislative solution to its Voting Rights Act problem.[8] The calendar for such an election is set forth in the memorandum of the Registrar of Voters to County Counsel dated October 4, 1994 (Appendix A).

Although a federal court's authorization of the emergency, interim use of a court-created election plan does not normally require preclearance, see 28 C.F.R. § 51.18(c), such preclearance is required when the covered jurisdiction submits a proposal reflecting its policy choices irrespective of what constraints have limited the choices available to it. McDaniel v. Sanchez, 452 U.S. 1128, 101 S. Ct. 2224 (1981). Since the court-ordered plan here is based upon a proposal submitted by the County, the County may be statutorily required to seek preclearance of the plan, even though it is only an interim,

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[8] The court does not intend by this order to pass judgment on the merits of the proposed election area plan as a potential permanent plan. That judgment is best left to legislators.

court-directed plan. This should present no obstacle, however, as the Attorney General is apparently prepared to give expedited approval. Amicus Curiae Brief of the United States dated May 13, 1994, at 9 n. 10.

V. ORDER

1. Monterey County is ordered to develop a permanent plan for the election of municipal court judges which complies with the Voting Rights Act and does not violate state law. The County shall take any steps required to obtain changes in existing state law and county ordinances.

2. Monterey County is hereby enjoined from holding elections for municipal court judges pending adoption and preclearance of a permanent plan or further order of this court.

3. Notwithstanding paragraph 2 above, the County shall implement as a court-ordered, emergency, interim plan for a special election in 1995 the election plan set forth in the Second Stipulation presented to the court by Plaintiffs and the County on January 13, 1994 with a new election calendar as set forth in the memorandum of the Registrar of Voters to the County Counsel dated October 4, 1994. The terms of office of those elected pursuant to the interim plan shall expire on the first Monday in January 1997. The court foresees that a permanent, precleared plan will be implemented in time for the next general election in 1996. The court retains jurisdiction over the implementation of the court-ordered, interim plan.

Dated: 12/20/94

/s/

Ronald M. Whyte
United States District Judge
On Behalf of the Panel

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiff, v. MONTEREY COUNTY, CALIFORNIA, Defendant.	NO. C-91-20559-RMW (EAI) ORDER CLARIFYING ORDER DATED DECEMBER 20, 1994

PANEL: Circuit Judge Mary M. Schroeder and
District Judges James Ware and
Ronald M. Whyte

The court's order dated December 20, 1994 contemplates the normal election process for municipal court judges, except as otherwise specified in the order. Under California law, municipal court judges are elected only by majority vote, not by a simple plurality of votes cast. Therefore, the court's order requires a primary election with run-offs thereafter, if necessary.

Dated: 1/10/95

/s/
Ronald M. Whyte
United States District Judge
On Behalf of the Panel

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA, Defendant, STATE OF CALIFORNIA, Defendant-Intervenor.	NO. C-91-20559-RMW (EAI) Voting Rights Action Three Judge Court

PLAINTIFFS' SECOND NOTICE REGARDING ELECTION SCHEDULE PROPOSED BY MONTEREY COUNTY

On January 4, 1995, the Plaintiffs forwarded to the Court by facsimile transmission Plaintiffs' Notice Regarding Election Schedule Proposed by Monterey County. Plaintiffs' January 4, 1995, Notice was based upon the correspondence forwarded by Defendant Monterey County on December 22, 1994. In the

December 22, 1994, correspondence Monterey County proposed holding only one election in June 1995 based upon the Court's interim court-ordered election plan to elect judges to the Monterey County Municipal Court District. Plaintiffs did not oppose such a proposal since the underlying assumption was that any run-off elections would be held in November 1995. Since the 1996 election process would commence in the latter part of December 1995 or shortly thereafter, Plaintiffs agreed that a November 1995 run-off election would place an additional burden on judicial candidates by requiring the newly elected municipal court judges to start their re-election campaigns within a two month period after their assumption of judicial office in November 1995.

On January 5, 1995, the United States Attorney General forwarded by facsimile transmission the Response of United States to Court's Inquiry Regarding Special Election Schedule. The Response appears to suggest that a single election in the context of this litigation may not receive the necessary approval pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c. Subsequently on January 6, 1995, Monterey County forwarded by facsimile transmission a correspondence indicating that if the Court were to order a run-off election, such an election could be held as early as August 1, 1995.

In view of the concerns expressed by the United States Attorney General and the notice by Monterey County that a run-off election could be held as early as August 1, 1995, the Plaintiffs are submitting this Second Notice to express approval of a special run-off election to be held as early as August 1, 1995. Having such a run-off election on August 1, 1995, would clearly address the concerns expressed by the United States Attorney General and could result in an expedited Section 5 approval of the Court's election plan.

DATED: January 7, 1995

JOAQUIN G. AVILA
BARBARA Y. PHILLIPS
By:

/s/
JOAQUIN G. AVILA
Attorney for Plaintiffs
(Declaration of Service Omitted in Printing)

Filed
JAN 18, 1995
Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, vs. MONTEREY COUNTY, CALIFORNIA, Defendants, STATE OF CALIFORNIA, Intervenor, MICHAEL S. FIELDS, Intervenor.	NO. C-91-20559-RMW (EAI) (Voting Rights Action/Three Judge Court) ORDER GRANTING WITHDRAWAL OF INTERVENOR

Good cause appearing,

IT IS HEREBY ORDERED that the application of Intervenor Michael S. Fields to withdraw is granted.

Dated: 1/18/95 /s/ - Ronald M. Whyte
Judge,
United States District Court

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Attorneys for Proposed Intervenor
Stephen A. Sillman as Presiding
Judge of the Monterey County
Municipal Court

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, et al., Plaintiffs, vs. MONTEREY COUNTY, CALIFORNIA, Defendants.	NO. C-91-20559-RMW (EAI) THREE JUDGE COURT DECLARATION OF HONORABLE STEPHEN A. SILLMAN, PRESIDING JUDGE OF THE MONTEREY COUNTY MUNICIPAL COURT

I, Stephen A. Sillman, declare:

1. I am the Presiding Judge of the Monterey County Municipal Court. I have held this position since January 1,

1995. I was previously Presiding Judge for the 1988 calendar year. I have been a member of the court since August 1982. My current term runs from January 1993 through January 1999.

2. The Three-judge Court in this case entered orders on December 20, 1994 and January 10, 1995 providing for Municipal Court elections in 1995 and 1996. (The December 20 and January 10 orders are collectively referred to herein as the "Election Order.") Under the Election Order there will potentially be 21 judicial elections involving 8 of the Municipal Court's 10 judges over approximately the next 17 months. The time required for the affected Municipal Court judges to campaign and engage in the necessary activities for election will significantly interfere with the administration of justice in the Monterey County Municipal Court and potentially impair the constitutional rights of Municipal Court litigants.

3. I make this declaration of my personal knowledge, except for those matters stated herein on information and belief, in support of my request to intervene in this action in my official capacity as presiding judge of the Monterey County Municipal Court.[1] I seek intervention for the limited purpose of requesting that the Three-judge Court consider a modification of its Election Order to provide for six-year terms retroactive to 1994 for the judges subject to election in 1995. To my knowledge, the Three-judge Court has not been previously advised of the severe impact the Election Order would have on the official duties of the Municipal Court judges. I also request leave to intervene in my official capacity in order to advise the Three-judge Court of the potential effect of future remedial proposals on the ability of the Municipal Court to perform its official duties. I believe my intervention as presiding judge will provide more complete information to the Three-

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[1] My seat will not be up for election either in the 1995 special elections ordered by the Three-Judge Court or in the 1996 regular judicial elections.

judge Court, hopefully avoiding the need for future requests for reconsideration because the Court lacked information material to its decisions.

4. The presiding judge of the Municipal Court has not previously sought intervention because my predecessors have been advised by County Counsel since the very inception of this action that, in the opinion of that office, the Municipal Court does not have a legally cognizable interest in a voting rights action. (County Counsel provides legal representation on official matters to the Monterey County Municipal Court, except in the cases of conflict of interest.) Representation was also formally requested by Judges Fields and Scott and denied on the same basis. Hence, Judge Alan Hedegard, my predecessor as presiding judge has participated as an amicus curiae. County Counsel has provided to the presiding judge copies of court documents and orders, and occasionally met with individual judges.

5. While I did not necessarily agree that this action could have no impact on the official duties of the Municipal Court or its judges, at the stage of the proceeding at which the prior requests for representation were made, it was debatable whether an "individual" interest was being asserted or an interest that affected the official duties of the court. The Election Order is different. In my view, the impact of the Election Order on the ability of the Municipal Court and its judges to perform their official duties is clear.

6. Neither Judge Hedegard nor I were aware of the provisions of the December 20 Order until after it was issued. It is my understanding that interim elections in 1995 were to be discussed at a November 3, 1994 status conference. Judge Kingsley, who attended the November 3 conference told me, however, that such matters as primary and runoff elections in 1995 and abbreviated one-year terms for the judges subject to election in 1995 were not discussed. Rather, the focus was on an equal protection question raised by the state Attorney

General which became the subject of post-status conference briefing.

7. Judge Hedegard has advised me that he learned of the December 20 Order the day it was issued. Later that same day, he met with County Counsel who informed him that the Board of Supervisors planned to comply with the order at its regularly scheduled meeting that very day. Because of the need to implement the Order expeditiously, the Board planned to forego a public hearing and instead implement the December 20 order by resolution. The Board did so.

8. Judge Hedegard immediately contacted an attorney, Ms. Marguerite Leoni of Nielsen, Merksamer, Parrinello, Mueller & Naylor, who is experienced in Voting Rights Act and redistricting law and a meeting was scheduled. Neither Judge Hedegard nor I was advised that after issuing the December 20 Order, the Three-judge Court had requested briefing from the parties concerning whether the December 20 order should be modified to add runoff elections in 1995. While Judge Hedegard did receive copies of briefs and letters after they were filed, he was not consulted about the impact such a modification could have on the court. Hence, an opportunity was missed to bring these matters to the Three-judge Court's attention. I learned about the Three-judge Court's January 10 order from a newspaper report the next day.

9. Several other Municipal Court judges and I met with Marguerite Leoni on January 10. Afterwards, Ms. Leoni contacted all counsel of record and informed them of the consequences that the Election Order would have on the administration of justice by the Municipal Court judges. Ms. Leoni also requested that the parties consider applying to the Three-judge Court for a stipulated modification of the Election Order. I contacted County Counsel about this matter by letter dated January 13, 1995, and I officially requested that the County provide legal representation to the Municipal Court on these questions. (Attachment A.) I was informed by return

letter that County Counsel would recommend that my request be denied, but that the matter would be considered by the Board of Supervisors at its January 24 meeting. (Attachment B.) I requested permission to address the Board of Supervisors on this issue. In my absence, Judges Moody, Duffy, Anderson and Curtis addressed the Board on January 24, 1995, and informed the Board of the impact of the Election Order on the Municipal Court. After that meeting the Board instructed County Counsel to apply to the Three-judge Court for a modification of its Election Order to provide that the Municipal Court judges subject to election in the 1995 special elections serve six-year terms retroactive to 1994. While this seemed inconsistent with the County's refusal to provide representation to the Municipal Court in its official capacity, my interests as presiding judge were satisfied if the County would advise the Three-judge Court about the impact its Election Order would have on the official duties of the Municipal Court and request a modification. (See Minutes of the January 24 meeting of the Board of Supervisors and newspaper reports of the actions of the Board of Supervisors, all of which are included in Attachment C.)

10. Pursuant to that information, I immediately prepared a detailed nine-page declaration as Presiding Judge describing how the Election Order would affect the duties of the Municipal Court and I delivered it to County Counsel on or about February 6 to be filed in support of the County's request for a modification of the Election Order. Since then over a month has elapsed.[2] I feel I have no other alternative at this

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[2] It is my understanding that the County planned to make its request for a modification in part on the ground that it is not feasible to have a precleared permanent plan in place in time for the 1996 elections. The County has previously indicated its belief that the only way to comply with the requirements of both federal and state law in the design of a permanent plan is to amend the state's constitution and that cannot be accomplished

point, but to request intervention.

11. The December 20 order provides for special elections for seven seats on the Municipal Court in June 1995 to be conducted in a temporary four-division electoral plan. On January 10, 1995, the Three-judge court entered an order clarifying the December 20 order and providing for a runoff election in August 1995 if no candidate received a majority vote in June. Under the provisions of the Election Order, the terms of the judges elected in 1995 end on January 1, 1997. Hence, the judicial seats which require election in 1995 plus one other are scheduled for election again in 1996 with a primary in June and a runoff in November. Four of the seven seats up for election in 1995 were challenged. Hence, there will be four elections in June and the likelihood of a runoff in August in a multiple candidate election in Division 4. The same seven seats plus one additional judicial position are up for election again in 1996 primaries and runoffs for a total of potentially 21 judicial elections in 17 months.

12. The Election Order represents an undue burden on the ability of the Municipal Court judges to carry out their official duties and responsibilities, including guaranteeing basic constitutional rights. The eight judges affected by the Election

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in time to hold elections in 1996. The Municipal Court has not been included in or consulted about any of the discussions between plaintiffs and the County concerning the proposed remedies in this case. I am factually unfamiliar with them and thus have not formed any legal opinion on whether or not the State Constitution must be amended to satisfy the Voting Rights Act. Hence, it is not at all clear to me that a permanent plan cannot be in place in time for the 1996 judicial elections. Nevertheless, the ability of the Monterey County Municipal Court to perform its official duties while under the campaign/fundraising schedule set in the Election Order is not dependent on whether or not the state Constitution is amended.

Order must spend a significant amount of time campaigning and fundraising[3] with scheduled time off from the bench. The four judges who must run both in 1995 and 1996, could be campaigning and fundraising for virtually 2 years. The length of the campaign and the number of judges involved will be a substantial drain on the resources of the Municipal Court, will severely burden its ability to adjudicate cases in a timely fashion, and will potentially impact the constitutional rights of litigants.

13. The Monterey County Municipal Court is only a 10-judge bench. The practical effect of the Election Order is potentially 21 primary and runoff elections in 17 months involving 4 to 8 of the 10 judicial positions on the Monterey County Municipal Court. Based on my personal knowledge of the time demands of judicial campaigns, my experience as Presiding Judge with responsibility for the efficient adjudication of cases by the court without undue delays, and my knowledge of the operation of the Monterey County Municipal Court. The impact will extend months and perhaps as long as a year beyond the 1996 elections.

14. In 1982, the Municipal Court adopted the federal system of case assignment. Cases are assigned to a particular judge for all purposes. In the 1992-93 fiscal year, nearly 103,000 cases were filed in the Municipal Court, of these 93,581 were criminal proceedings (including 1,957 felonies, 9,531 misdemeanors, and 5,111 DUI cases) and 9,237 were civil actions. This is over 8,500 filings per month. (The 1993-94 figures are not yet available.) The Judicial Administration Standards issued by the California Judicial Council and contained in the California Rules of Court provide the time frames to which a municipal court should adhere in adjudicating its cases (copy of the relevant section is attached as Attachment D). 90 percent of felony cases must be disposed of within 1

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[3] For example, my 1986 campaign cost $43,917.00. I won in the primary so no runoff was required.

month of the defendant's first court appearance, 98 percent must be resolved in 45 days, and all cases must be adjudicated within 3 months. The same time frames have been set for misdemeanor cases and infractions. For general civil cases, 90 percent must be resolved in 12 months, 98 percent resolved in 17 months, and 100 percent disposed of within 2 years. The Monterey County Municipal Court meets these standards. To do so, however, requires each judge to adhere to a rigorous calendar with minimal extensions and continuances.

15. Requiring 40 percent of the Monterey County Municipal Court to run for election in 1995 and potentially 80 percent to run in 1996 will make it extremely difficult, if not impossible for the Municipal Court to meet the timelines set forth in the Judicial Administration Standards. The consequences will be unprecedented. Generally only one judge (or possibly two) is ever involved in an election at any one time. Because of the time demands of campaigning, the progress of a courtroom calendar slows down when a judge is required to schedule time off to attend to campaign fundraising, public appearances, citizen forums, and other campaign activities in connection with reelection. As the election date grows near, a judge involved in an election has, in the past, typically scheduled vacation time for the three weeks or so prior to the election in order to devote full time to the campaign.

16. I ran for reelection in 1986. I was one of only two judges involved in an election that year. I started my campaign in earnest in February and took vacation for three weeks prior to the election. In order to be absent from the bench, I was required to double set, reset or continue matters on my calendar and set some hearings beyond the normal scheduling limits. Despite these accommodations, by the time the election was over, my calendar was at least one month behind. In my absence, the other judges were able to provide coverage in those instances where cases were legally required to be heard. Since I did not need to campaign again in a runoff

election, I was able to get my calendar back on schedule within a few months.

17. Another example of the disruption caused to a judge's calendar by campaigning in an election occurred in 1994 when Judge Michael Fields (who was an intervenor in this case at that time) ran for election to the Monterey County Superior Court. The average number of pretrial hearings per month in any one trial department of the Monterey County Municipal Court is approximately 90 to 100. Judge Fields was elected to the Superior Court in November 1994. On January 1, 1995, Judge Alan Hedegard was assigned to assume the responsibilities of Judge Fields' department. During January, two months after the election, there was still a backlog of 210 pretrial hearings on Judge Field's calendar which had been set that month.

18. Under the Election Order, four judges will be on the ballot in 1995. Eight will be on the 1996 ballot. Hence, the disruption described above will be multiplied four-fold in 1995 and eight-fold in 1996. Each one of the judges who must run for election is entitled, and indeed will be required, to conduct a campaign including fundraising, speeches and campaign appearances. Each judge will require time off from his or her calendar and normal duties commencing two to three months before the election to devote energy to reelection both for the primary and the runoff, if necessary. The practical effect of this is disruption of 40 to 80 percent of the Municipal Court's caseload. The two judges who are not up for election in 1996 will not be able to absorb all the cases that cannot be delayed while the other judges are campaigning. The criminal calendar will be affected. (See Judge Fields example above.) Civil litigants will suffer an even greater impact because of the priority that must be given to criminal cases. If eight of the ten judges are running for election in 1996, it is even possible that no Municipal Court civil matters will be heard at all between mid-May and mid-November.

19. As Presiding Judge, I have only one option for

dealing with this situation: request visiting judges to sit in the absence of the judges who are campaigning for election. In my view, at least four to seven visiting judges would be necessary starting the month before the primary through the runoff. However, State budgetary constraints would likely not permit more than one or possibly two. (Visiting judges are paid by the Judicial Council from the State Budget a pro rata share of a judge's full annual salary ($360 per day) plus per diem ($37 per day) plus up to $110 per day for lodging.) As a result, even with one or two visiting judges, the court's cases will not be adjudicated or otherwise resolved within the Judicial Administration Standards. This delay could rise to constitutional dimensions with regard to criminal defendants.

20. The impact is greater for new judges. Generally a new judge is assigned a mentor and devotes several weeks to orientation including attending judge's school and observing other judges prior to assuming independent responsibility for the management of a courtroom calendar and docket. Generally it takes a new judge on average approximately six to nine months to be able to manage efficiently a full caseload with minimal judicial error and maximum effectiveness. The new judges who are elected in 1995 will have just completed orientation and begun to adjudicate cases in their own courtrooms when they will be required to start their 1996 campaigns. If a new 1995 judge is defeated, restabilizing the administration of justice will be further delayed in the Monterey County Municipal Court as the process of orienting and training the new 1996 class of judges must start once again.

21. As Presiding Judge, I wish to intervene in this action in my official capacity to request that the Three-judge Court modify the Election Order to provide six-year terms retroactive to 1994 for judges elected in 1995. Six-year terms will help mitigate the adverse impact of the Election Order. The Monterey County Municipal Court unequivocally supports the Voting Rights Act. However, the disruption caused by the

Election Order does not appear to be necessary to preserve minority voting rights. The requested modification would preserve elections in the minority electoral divisions at the earliest possible time and afford six-year terms retroactive to 1994 to the newly elected judges including those elected in the minority divisions. I am informed that the plaintiffs in this case would not oppose a modification. Also, a modification of the Election Order would be consistent with the state law scheme of six-year terms for municipal court judges. I am also informed that the state Attorney General would not oppose the requested modification.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and of my own personal knowledge except for those matters stated on information and belief and, as to those matters, I believe them to be true. If called as a witness, I could competently testify thereto.

Executed on March 10, 1995, at Salinas, California.

/s/
Honorable Stephen A. Sillman

(Declaration of Service Omitted in Printing)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, et al.,

Plaintiffs,

vs.

MONTEREY COUNTY, CALIFORNIA,

Defendants.

NO. C-91-20559-RMW (EAI)
THREE JUDGE COURT

REQUEST FOR MODIFICATION OF DECEMBER 20, 1994 AND JANUARY 10, 1995 ORDERS

I. INTRODUCTION.

Judge Stephen A. Sillman, Presiding Judge of the Monterey County Municipal Court, respectfully requests that the Three-judge Court modify its December 20, 1994 and January 10, 1995 orders ("Election Order" herein) to provide that the judges subject to election in 1995 serve six-year terms retroactive to 1994. Under the Election Order there is the potential for 21 judicial elections within 18 months for seats on the Municipal Court's 10-judge bench. Eight of the judges will stand for election at the same time in 1996. The time demands for campaigning and fundraising for this number of elections will unnecessarily and unduly burden the ability of the Municipal Court to adjudicate cases within the timelines set forth in the California Rules of Court and poses a threat to the constitutional rights of litigants. Providing six-year terms to the judges subject to election in 1995 will help mitigate this negative impact.

II. DISCUSSION OF IMPACT OF ELECTION ORDER ON ADMINISTRATION OF JUSTICE.

Attached hereto is Judge Sillman's declaration describing at length the impact that the Election Order will have on the official duties of the Monterey County Municipal Court. In summary:

The Election order will unduly burden the Municipal Court's ability to administer justice in a timely fashion by placing potentially four judges on a two-year campaign cycle in 1995 and 1996, and subjecting 80 percent of the judges to election in 1996. The Municipal Court does not have the resources to insure that cases will continue to be adjudicated within the timelines set forth in California Rules of Court with this number of judges involved in campaigns and scheduling time away from their courtrooms.

The California Rules of Court set forth the timelines in which cases should be adjudicated. Section 2.3 provides in pertinent part:

(b) [General civil cases] A

general civil case is any civil case other than a small claims or unlawful detainer case. The goals for general civil cases are:
(1) 90 percent disposed of within 12 months after filing;
(2) 98 percent disposed of within 18 months after filing;
(3) 100 percent disposed of within 24 months after filing

(e) [Misdemeanor cases] The goals for misdemeanor cases are:
(1) 90 percent disposed of within 30 days after the defendants' first court appearance;
(2) 98 percent disposed of within 90 days after the defendants' first court appearance;
(3) 100 percent disposed of within 120 days after the defendants' first court appearance.

(f) [Felony preliminary examinations] The goal for felony filings, excluding murder cases in which the prosecution seeks the death penalty, is disposition (by certified plea, finding of probable cause, or dismissal) of:
(1) 90 percent within 30 days after the defendants' first court appearance;
(2) 98 percent within 45 days after the defendants' first court appearance
(3) 100 percent within 90 days after the defendants' first court appearance.

These timelines protect the constitutional and statutory rights of criminal defendants. (See, e.g., Cal. Const. Art I, § 15, Penal Code §§ 686, 1050, and 1382: speedy trial; Penal Code § 859b: preliminary examination to be held within 10 days of

arraignment or plea; Penal Code §§ 861: restrictions on postponement of preliminary hearings; Penal Code § 1050: restrictions on continuances.) The timelines also ensure access to the courts to civil litigants and expeditious resolution of their causes.

Section 2 of the Appendix of the California Rules of Court provides in relevant part:

> Trial courts should be guided by the general principle that from the commencement of litigation to its resolution, whether by trial or settlement, <u>any elapsed time other than reasonably required for pleadings, discovery, and court events is unacceptable and should be eliminated</u>.

Under the Election Order, it is inevitable that the administration of justice will be disrupted in the Monterey County Municipal Court. In the 1992-93 fiscal year, nearly 103,000 cases were filed in the Municipal Court. Of these 93,581 were criminal and 9,237 were civil actions. This is over 8,500 filings per month. Judicial Council standards for adjudication of these cases cannot possibly be met under the campaign/fundraising schedule set in the Election Order. With criminal defendants, delays could have constitutional implications. Civil litigants will suffer a greater impact. Civil litigants' access to the courts will be restricted to accommodate the exigencies of the criminal calendar since continuances in criminal cases are strictly limited by statute. If eight judges must campaign in 1996 primaries and runoffs, only a few statutorily required civil cases would be heard between mid-May and mid-November.

III. <u>REQUESTED MODIFICATION</u>

Intervenor respectfully requests that the Three-judge Court modify its Election Order to provide that the judges subject to election in 1995 be accorded six-year terms

retroactive to 1994, rather than be required to run again in 1996. This would mitigate the impact of the Election Order on the official functions of the Municipal Court. The requested modification would also be consistent with the protection of minority voting rights. The Monterey County Municipal Court unequivocally supports the Voting Rights Act. The proposed modification would preserve the 1995 elections in the minority electoral divisions and afford six-year terms to the newly elected judges from those divisions. The provision for six-year terms is also consistent with the state law which provides for six-year terms for municipal court judges.

There is precedent in California for allowing persons to serve full terms who are elected under a temporary court-ordered districting plan. One example is Assembly v. Deukmejian, 30 Cal.3d 638 (1982). In that case, districting plans for Congress and the state Legislature were suspended by the operation of a statewide referendum. The California Supreme Court, however, adopted the suspended plans as temporary districting plans for the 1992 Congressional and state legislative elections pending the referendum election. The plans were defeated in the referendum election. Nevertheless, the legislators and members of Congress elected under the temporary plans served full terms in office.

Intervenor has been previously informed that counsel for plaintiffs and the Attorney General would not oppose six-year terms for the judges subject to election in 1995. The County itself after its January 24 meeting, instructed County Counsel to request this same modification from the Three-judge Court.

IV. CONCLUSION.

Intervenor respectfully requests that this Court modify its Election Order as set forth above.

DATED: March 10, 1995.

Respectfully submitted,

NIELSEN, MERKSAMER, PARRINELLO,
MUELLER & NAYLOR

By /s/
Marguerite Mary Leoni
Attorneys for Intervenor
Stephen A. Sillman,
as Presiding Judge of the
Monterey County Municipal Court

(Declaration of Service Omitted in Printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA, Defendant.	NO. C 91-20559-RMW (EAI) ORDER GRANTING MOTION TO INTERVENE AND DENYING MOTION TO MODIFY ORDERS DATED DECEMBER 20, 1994 AND JANUARY 10, 1995

On March 10, 1995, Judge Stephen A. Sillman, Presiding Judge of the Monterey County Municipal Court ("Municipal Court"), moved to intervene in his official capacity in this action for the purposes of (1) seeking modification of the court's December 20, 1994 and January 10, 1995 orders (collectively, "the Election Order") and (2) representing the interests of the Municipal Court in future proceedings. Under the modification proposed by Judge Sillman, the terms of office of those elected in 1995 pursuant to the Election Order would be extended from

one year to six years retroactive to 1994. The court set March 29, 1995 as a deadline for responses from any party wishing to either respond to Judge Sillman's motion to intervene or independently move for a modification of the Election Order.

Plaintiffs and the State of California have filed statements of non-opposition to Judge Sillman's proposed intervention and modification of the Election Order. The United States has filed a response in which it urges the court to defer an extension of terms until a later date; the United States does not appear to oppose Judge Sillman's proposed intervention. Defendant Monterey County ("the County") has filed both a motion to modify the Election Order in accordance with Judge Sillman's proposal and an opposition to Judge Sillman's motion to intervene.

In light of Judge Sillman's interest in the efficient administration of the Monterey County Municipal Court, the court grants his motion to intervene in his official capacity as Presiding Judge of the Municipal Court. Judge Sillman's participation in this action is not precluded by the holding in League of United Latin American Citizens v. Clements, 884 F.2d 185 (5th Cir. 1989), where the judges seeking to intervene asserted an interest in the "legislation action" of redistricting, id. at 188. Here, by contrast, Judge Sillman is seeking to protect the administration of justice in Monterey County, a concern independent from an interest in the configuration of particular districts.

Additionally, the court denies without prejudice the County's motion to modify the Election Order to extend the terms of those elected in 1995. The court has considered the concerns raised by the County and Judge Sillman about the cost of conducting back-to-back elections in 1995 and 1996, the interference with judicial administration that could result therefrom, and the impracticability of the parties' reaching a permanent solution before 1996. On the other hand, the court is reluctant and unwilling at this time to establish six-year terms

under an election plan that is designed to be an emergency, temporary solution to a problem most appropriately addressed through legislative action.

The court hereby sets a status conference for September 28, 1995 at 1:30 p.m. At least five days before the status conference, each party shall file a statement showing:

(1) what efforts have been made to implement a permanent solution;

(2) whether a permanent plan will be in effect for the 1996 general election; and

(3) if a permanent plan will not be in effect in 1996, when such implementation is anticipated.

Copies of each party's statement should be sent directly to the chambers of each of the judges on the panel.

Dated: 4/10/95

/s/
Ronald M. Whyte
United States District Judge
On Behalf of the Panel

Filed
SEP 7, 1995
Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Vicky M. Lopez et al.,

Plaintiffs,

v.

Monterey County, California

Defendant.

State of California,
Intervenor-Defendant.

NO. C-91-20559 RMW (EAI)
Order Re Briefing for Status Conference

The parties are hereby requested to brief the effect of Miller v. Johnson, 95 Daily Journal D.A.R. 8495 on this case in their status conference statements for the status conference on September 28, 1995 at 1:30 p.m.

Dated: 9/6/95

/s/
Ronald M. Whyte
United States District Judge
On Behalf of the Panel

Filed
OCT 3, 1995
Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, et al. Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA, Defendant.	NO. C-91-20559-RMW (EAI) REQUEST FOR AMICUS CURIAE BRIEF FROM UNITED STATES

The court does request that the United States submit a brief discussing the effect of Miller vs. Johnson on this case. The court would further request that the brief be filed by October 10, 1995.

Dated: 10/3/95

/s/
Ronald M. Whyte
United States District Judge

Filed
NOV 1,1995
Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA, Defendant. STATE OF CALIFORNIA, Intervenor-Defendant.	NO. C-91-20559-RMW Voting Rights Action Three Judge Court ORDER MODIFYING INJUNCTION

Background

On December 20, 1994 this court ordered the County of Monterey to hold a special election in 1995 for municipal court judges pursuant to a court-ordered, emergency, interim election plan.[1] The court otherwise enjoined the election of municipal court judges pending the adoption and preclearance of a permanent election plan which complies with the Voting Rights Act and State law. The special election took place on June 6, 1995 and the terms of those elected stand to expire pursuant to the December 20, 1994 order in January of 1997. Monterey

[1] The order was clarified on January 10, 1995 to make clear that the order required a primary election with run-offs thereafter, if necessary.

County has not yet been able to implement a permanent election plan. Therefore, the court faces the difficult question of what to do now.

Position of Parties

The plaintiffs want the court to implement a permanent election plan and to continue in the meantime the implementation of the plan utilized in the June 6, 1995 special election. The County requests that the court extend the terms of those elected, so that it can preclear and judicially validate a permanent plan before another election. The State urges the court to dismiss this Section 5 action as moot because the non-precleared consolidation ordinances were superceded by state law. If the court will not dismiss the action as moot, the State wants: (1) to be joined as a necessary party; (2) to have vacated the court's March 31, 1993 order finding that the County's consolidation ordinances were not precleared; (3) to litigate the merits of the preclearance issues; and (4) to allow county-wide elections in the meantime. Judge Sillman, the current presiding judge of the municipal court, urges that the court order county-wide elections to go forward in March of 1996 as an interim plan and that those elected remain in office for regular six year terms.

Analysis

The court finds this case to be one with no easy solution. We are faced with a Section 5 violation.[2] No permanent plan can be in place for a March election. A return to the status quo that existed before the enactment of the consolidation ordinances

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[2] The State appears to believe there has been no Section 5 violation that affects the County's ability to hold county-wide judicial elections. At this point the court is not persuaded by the State's position, but the State can now seek to show that the County is merely administering a state law calling for county-wide elections and, therefor, no preclearance requirement is involved.

is not legal, feasible or desired. The Supreme Court in Miller v. Johnson, 115 S.Ct. 2475 (1995), has cast substantial doubt upon the constitutionality of extending the duration of the previously ordered emergency, interim plan, as that plan used race as a significant factor in dividing the County into election areas. Therefore, the court is concerned that extending the terms of those elected would be inappropriate. Under the circumstances, the court concludes that it should allow a county-wide election of municipal court judges in the general election in 1996 but enjoin elections thereafter pending preclearance of a permanent plan that complies with the Voting Rights Act and state law.

The court recognizes that now permitting an election on a county-wide basis raises some legitimate concerns. Although the court has not accepted the stipulation between the County and plaintiffs that the County Board of Supervisors "is unable to establish that the Municipal Court Judicial Court Consolidation Ordinances. . .did not have the effect of denying the right to vote to Latinos in Monterey County due to the retrogressive effect several of these ordinances had on Latino voting strength...." (Monterey County, Cal., Resolution 94-107), the court cannot overlook that stipulation in fashioning a temporary solution. However, this litigation is not a Section 2 proceeding. Further, neither the plaintiffs nor the County suggest that there is any evidence of purposeful discrimination in the enacting of the consolidation ordinances. Finally, Miller raises substantial doubt as to whether legislative division into race based districts or election areas can ever withstand constitutional scrutiny.

> Just as the State may not, absent extraordinary justification, segregate citizens on the basis of race in its public parks, New Orleans City Park Improvement Assn. v. Detiege, 358 U.S. 54, 79 S.Ct. 99, 3 L.Ed.2d 46 (1958) (per curiam), buses, Gayle v.

Browder, 352 U.S. 903, 77 S.Ct. 145, 1 L.Ed.2d 114 (1956) (per curiam), golf courses, Holmes v. Atlanta, 350 U.S. 879, 76 S.Ct. 141, 100 L.Ed. 776 (1955) (per curiam), beaches, Mayor and City Council of Baltimore v. Dawson, 350 U.S. 877, 76 S.Ct. 133, 100 L.Ed. 774 (1955) (per curiam), and schools, Brown, supra, so did we recognize in Shaw that it may not separate its citizens into different voting districts on the basis of race. The idea is a simple one: "At the heart of the Constitution's guarantee of equal protection lies the simple command that the Government must treat citizens 'as individuals, not "as simply components of a racial, religious, sexual or national class." ' " Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 602, 110 S.Ct. 2997, 3028, 111 L.Ed.2d 445 (1990) (O'CONNOR, J., dissenting) (quoting Arizona Governing Comm. for Tax Deferred Annuity and Deferred Compensation Plans v. Norris, 463 U.S. 1073, 1083, 103 S.Ct. 3492, 3498, 77 L.Ed.2d 1236 (1983); cf. Northeastern Fla. Chapter, Associated Gen. Contractors of America v.

Jacksonville, 508 U.S.__, __, 113 S.Ct. 2297, 2303, 124 L.Ed.2d 586 (1993) (" 'injury in fact' " was "denial of equal treatment ... not the ultimate inability to obtain the benefit"). When the State assigns voters on the basis of race, it engages in the offensive and demeaning assumption that voters of a particular race, because of their race, "think alike, share the same political interests, and will prefer the same candidates at the polls." Shaw, supra, at __, 113 S.Ct., at 2827; see Metro Broadcasting, supra at 636, 110 S.Ct., at 3046 (KENNEDY, J., dissenting). Race-based assignments "embody stereotypes that treat individuals as the product of their race, evaluating their thoughts and efforts--their very worth as citizens--according to a criterion barred to the Government by history and the Constitution." Metro Broadcasting, supra, at 604, 110 S.Ct., at 3029 ("O'CONNOR, J., dissenting) (citation omitted); see Powers v. Ohio, 499 U.S. 400, 410, 111 S.Ct. 1364, 1370, 113 L.Ed.2d 411 (1991) ("Race cannot be a proxy for determining juror bias or competence"); Palmore v.

Sidoti, 466 U.S. 429, 432, 104 S.Ct. 1879, 1881, 80 L.Ed.2d 421 (1984) ("Classifying persons according to their race is more likely to reflect racial prejudice than legitimate public concerns; the race, not the person, dictates the category"). They also cause society serious harm. As we concluded in Shaw:

> "Racial classifications with respect to voting carry particular dangers. Racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters--a goal that the Fourteenth and Fifteenth Amendments embody, and to which the Nation continues to aspire. It is for these reasons that race-based districting by our state legislatures demands close judicial scrutiny." Shaw, supra, at _ , 113 S.Ct., at 2832.

Miller, 115 S.Ct. at 2486.

Whether race based election areas can withstand constitutional scrutiny is particularly doubtful when, as here, the legislative body is dealing with the election of judges who serve the entire County and no claim is made that the County itself was configured to deprive any racial or ethnic group of voting power. As pointed out above, Miller cautions that "[w]hen the state assigns voters on the basis of race, it engages in the offensive and demeaning assumption that voters of a particular race, because of their race, 'think alike, share the same political interests, and will prefer the same candidates at the polls.' (citation omitted)." Id.

A county-wide election system does not assume that voters of a particular race or ethnicity will vote for the same candidates. It allows each voter one vote for each of the judicial offices. It makes the judges elected responsive to all citizens and avoids any risk of pressure on judges to respond to particular electoral constituents. See, Nipper v. Smith, 39 F.3d 1494, 1542-1547 (11th Cir. 1994).

Plaintiffs and the County contend that a county-wide voting plan cannot be imposed as an interim plan because it would be retrogressive in comparison to the interim, emergency plan implemented by the County after the court's December 20, 1994 order. (The appropriate retrogression comparison "...shall be with the last legally enforceable practice or procedure used by

the jurisdiction." 28 C.F.R. § 51.54(b)). The court doubts whether the prior interim plan can be considered "legally enforceable" within the meaning of the regulation, because it suspended otherwise applicable provisions of state law and was adopted only on an emergency basis. Further, given the reasoning of Miller, the court cannot say that a county-wide election plan is necessarily unlawfully retrogressive in comparison with the prior plan or the system in effect prior to the consolidation ordinances.

The court also has considered the fact that a county-wide election system was the legislative choice of the citizens prior to the filing of this lawsuit. The court certainly recognizes its obligation to protect minority voting rights from unconstitutional action of the majority. However, the court has been presented with no interim plan that it finds more protective of minority voting rights as defined in Miller than the county-wide election plan in force at the time this Section 5 lawsuit was filed.

Since this case is not a Section 2 case and since the County, to its credit, through its Board of Supervisors, still wants to enact an election plan that complies with the Voting Rights Act and state law, the court will defer holding any hearing on a permanent plan. The court also reconsiders its prior decision that the State should not be joined as an indispensable party. Since the State now argues that "in conducting municipal court elections, the County is not 'administering' its consolidation ordinances at all, but is instead 'administering' a *state statute* that defines the municipal court district to encompass the entire county," (State's Status Conference Memorandum, page 2, lines 12-14), the State clearly must be brought into this action in order to bring about a complete resolution of the issues. If the State believes that the County is only administering a State statute and that the failure to preclear the consolidation ordinances is of no significance, it can seek to lift the injunction and have this Section 5 litigation dismissed.

Order

Pursuant to its equitable power to effect a remedy, and for the reasons discussed above, the court modifies its previously issued injunction to allow the county-wide election of municipal court judges at the general election in 1996. The injunction remains in effect thereafter pending preclearance of a permanent plan that complies with the Voting Rights Act and state law. The terms of those elected will be for the normal six year term. All parties have an interest in stability of the court pending the implementation of a permanent election plan.

The court recognizes that the election schedule will have to be shortened somewhat to allow elections in March of 1996. However, the court believes the schedule can be shortened without unduly prejudicing any candidate. The County is hereby authorized to abbreviate the periods in its election calendar to allow all pre-election requirements to be fulfilled before the March 26,1996 election.

The court vacates its order of March 31, 1993 to the extent it denies the County's motion to join the State as an indispensable party and hereby joins the State.

The court also orders the parties to submit reports by September 6, 1996 outlining the progress that has been made in obtaining a permanent legislative solution.

DATED: 11/1/95

/s/
RONALD M. WHYTE
United States District Judge
On Behalf of the Panel

DANIEL E. LUNGREN, Attorney General
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, *et al.*, Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA; STATE OF CALIFORNIA, Defendants. STEPHEN A. SILLMAN, Intervenor.	NO. C-91-20559 RMW (Three Judge Court) STATE OF CALIFORNIA'S ANSWER TO COMPLAINT

COMES NOW defendant STATE OF CALIFORNIA ("State"), pursuant to the Court's November 1, 1995 order joining the State as an indispensable party defendant, and answers the complaint for declaratory and injunctive relief on file in this purported Voting Rights Action as follows:

1. Answering paragraph 1, admits that the statutes, regulations, codes, and/or constitutional provisions

cited therein speak for themselves. The remaining allegations contained in the paragraph 1 are merely argument, requiring no response by defendants; to the extent a response is required, the State denies each and every allegation contained therein.

2. Admits the allegations contained in paragraph 2.

3. Lacks sufficient information or belief to answer the allegations contained in paragraph 3, and, basing denial on that ground, denies each and every allegation contained therein.

4. Admits the allegations contained in paragraph 4.

5. Admits the allegations contained in paragraph 5.

6. Admits the allegations contained in paragraph 6.

7. Answering paragraph 7, admits that the statutes, regulations, codes, and/or constitutional provisions cited therein speak for themselves. The remaining allegations contained in the paragraph 7 are merely argument, requiring no response by defendants; to the extent a response is required, the State denies each and every allegation therein, and specifically denies that the Monterey County Board of Supervisors has any authority whatsoever to create, designate, modify, or consolidate justice court districts.

8. Admits the allegations contained in paragraph 8.

9. Denies each and every allegation contained in paragraph 9.

10. Denies each and every allegation contained in paragraph 10.

11. Denies each and every allegation contained in paragraph 11.

12. Denies each and every allegation contained in paragraph 12.

13. Admits the allegations contained in paragraph 13.

14. Admits the allegations contained in paragraph 14.

15. Admits the allegations contained in paragraph 15; however, defendant denies that, in conducting elections for municipal court judges, the County is implementing Ordinance No. 2524.

16. Denies each and every allegation contained in paragraph 16.

17. Denies each and every allegation contained in paragraph 17.

18. Admits the allegations contained in paragraph 18.

19. Admits the allegations contained in paragraph 19.

20. Admits the allegations contained in paragraph 20; however, defendant denies that, in conducting elections for municipal court judges, the County is implementing Ordinance No. 2920.

21. Denies each and every allegation contained in paragraph 21.

22. Denies each and every allegation contained in paragraph 22.

23. Denies each and every allegation contained in paragraph 23, and specifically and affirmatively alleges that "Monterey County Ordinance Nos. 2139, 2524, and 2930" have in fact been submitted to the United States Attorney General, that these ordinances have received Section 5 approval from the United States Department of Justice, and that plaintiffs have admitted these facts to this Court.

24. Lacks sufficient information or belief to answer the allegations contained in paragraph 24, and, basing denial on that ground, denies each and every allegation contained therein.

25. Denies each and every allegation contained in paragraph 25.

26. Answering paragraph 26, defendant denies that the County implements the alleged ordinances in conducting elections for municipal court judges, and further denies that the alleged ordinances constitute "changes affecting voting" within the meaning of the Voting Rights Act.

27. Answering paragraph 27, admits that plaintiffs have requested the convening of a Three Judge Court to preside over this action.

28. Answering paragraph 28, repeats and incorporates by reference his answers to paragraphs 1 through 27 as if fully set forth herein.

29. Denies each and every allegation contained in paragraph 29.

30. Denies each and every allegation contained in paragraph 30.

31. Denies each and every allegation contained in paragraph 31.

32. Answering paragraph 32, admits that the statutes, regulations, codes, and/or constitutional provisions cited therein speak for themselves. The remaining allegations contained in the paragraph 32 are merely argument, requiring no response by defendants; to the extent a response is required, the State denies each and every allegation contained therein, and specifically and affirmatively alleges that the Monterey County Ordinances cited therein have in fact secured Section 5 approval from the United States Department of Justice and that plaintiffs have admitted this fact to this Court.

33. Answering paragraph 33, the State notes that the allegations contained therein appear to be merely argument, requiring no response by defendants; to the extent a response is required, the State denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

I.

The complaint is barred by the doctrine of laches.

II.

The complaint has been rendered moot by the March 6, 1995 preclearance of all relevant Monterey County consolidation ordinances by the United States Department of Justice.

III.

The complaint has been further rendered moot by the fact that current elections of municipal court judges in Monterey County are conducted not pursuant to the Monterey County consolidation ordinances which are the subject of this action, but pursuant to superseding state statutes and provisions of the California Constitution. Plaintiffs have not alleged that these state statutes and constitutional provisions required Section 5 approval.

IV.

The complaint is barred by relevant statutes of limitations.

V.

Plaintiffs have failed to allege facts sufficient to state a claim for a race-based remedy.

VI.

No injunctive or other remedial order is appropriate in this action in light of the March 6, 1995 preclearance of all relevant Monterey County consolidation ordinances by the United States Department of Justice.

VII.

The complaint fails to state any claim against the State of California upon which relief of any sort can be granted.

WHEREFORE, defendant STATE OF CALIFORNIA respectfully prays that:

1. The complaint on file herein be dismissed with

prejudice;

2. Judgment be entered against the plaintiffs and in favor of defendant State;

4. Defendant State be awarded its costs of suit incurred herein; and

5. Defendant State be awarded such other and further relief as the Court deems to be proper.

Dated: November 16, 1995

Respectfully submitted,

DANIEL E. LUNGREN
Attorney General of California

LINDA CABATIC
Supervising Deputy Attorney General

MANUEL M. MEDEIROS
Deputy Attorney General

/s/
DANIEL G. STONE
Deputy Attorney General

Attorneys for State of California

(Declaration of Service Omitted in Printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA, Defendant. STATE OF CALIFORNIA, Intervenor-Defendant.	NO. C-91-20559-RMW Voting Rights Action Three Judge Court ORDER CLARIFYING ORDER MODIFYING INJUNCTION

The court hereby clarifies its Order Modifying Injunction which was issued on November 1, 1995.

The first sentence of the section entitled "**Order**" (page 5, lines 23-25) is deleted and the following is substituted:

> Pursuant to its equitable power to effect a remedy, and for the reasons discussed above, the court modifies its previously issued injunction to allow the county-wide election of municipal court judges in 1996 at the March primary with run-offs at the general election in November, if necessary.

The third sentence of that same section (page 5, lines 26-27) is deleted and the following substituted:

> The terms of those elected will be normal

> six year terms except that they will be deemed to have commenced in January of 1995, the date the terms would have commenced but for the court's previously issued injunction. The one exception is the office now held by Judge Wendy Duffy. Her term expires for the first time in January of 1997. Therefore, the term of the candidate elected to her office will expire in 2003. The terms of the other seven offices up for election will expire in January of 2001.

Dated: 11/20/95

/s/
Ronald M. Whyte
United States District Judge
On Behalf of the Panel

Filed
NOV 21, 1995
Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA,
Plaintiff,
v.

MONTEREY COUNTY, CALIFORNIA,
Defendants.

STATE OF CALIFORNIA,
Intervenor-Defendant.

NO. C-91-20559-RMW
Voting Rights Action
Three Judge Court
ORDER APPROVING RESOLUTION AND MODIFIED ELECTION SCHEDULE

By its November 1, 1995 order this court modified its previously issued injunction to allow the county-wide election of municipal court judges in 1996. The court also authorized the County to abbreviate the periods in its election calendar to allow all pre-election requirements to be fulfilled before the March 26, 1996 primary. On November 14, 1995 the County Board of Supervisors passed Resolution No. 95-506 to implement the court's order of November 1, 1995 and a modified election schedule. The court hereby approves the resolution and modified election schedule, copies of which are attached hereto.

Dated: 11/21/95

/s/
Ronald M. Whyte
United States District Judge
On Behalf of the Panel

Filed
NOV 30, 1995
Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiff, v. MONTEREY COUNTY, CALIFORNIA, Defendants. STATE OF CALIFORNIA, Intervenor-Defendant.	NO. C-91-20559-RMW Voting Rights Action Three Judge Court ORDER DENYING MOTION FOR RECONSIDER-ATION

The motion for reconsideration is denied. The court's Order Modifying Injunction filed November 1, 1995 was not based on any assumption that county-wide elections for municipal court judges had been precleared. The order reflects what the court believes is the appropriate temporary, equitable remedy pending preclearance of a plan that complies with the Voting Rights Act and does not violate state law.

DATED: November 30, 1995 /s/

JAMES WARE
United States District Judge
For the Panel

Filed
JAN 02, 1996
Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA, Defendant. STATE OF CALIFORNIA, Intervenor-Defendant.	NO. C-91-20559-RMW Voting Rights Action Three Judge Court ORDER DENYING REQUEST FOR STAY

Plaintiffs' expedited motion for a stay pending appeal is denied.

DATED: 12/29/95 /s/

RONALD M. WHYTE
United States District Judge
On Behalf of the Panel